

## SB246 INTRODUCED



1 SB246  
2 CXSFYQW-1  
3 By Senator Orr  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 03-Feb-26



## 4 SYNOPSIS:

5 Existing law does not provide specific consumer  
6 protections for victims of unsolicited  
7 investment-oriented real property solicitations. Also  
8 under existing law, the victim of an unfair service  
9 agreement can file a civil complaint and have a judge  
10 determine damages.

11 This bill would treat investment-oriented real  
12 property solicitations as transactions similar to  
13 unfair service agreements and would authorize the  
14 Alabama Securities Commission to investigate, regulate,  
15 enforce, and impose civil fines and penalties for  
16 violations of the unfair service agreement's statutes  
17 as well as unsolicited investment-oriented real  
18 property solicitations.

19 This bill would require unsolicited written  
20 offers to purchase real property to include certain  
21 notices to the owner, allow the owners to opt out of  
22 solicitations, allow cancellation of certain  
23 unsolicited purchase contracts, and provide that  
24 violations are a deceptive trade practice.

25 This bill would also make nonsubstantive,  
26 technical revisions to update the existing code  
27 language to current style.  
28



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A BILL

TO BE ENTITLED

AN ACT

Relating to consumer protection; to amend Sections 8-42-1, 8-42-2, and 8-42-3, Code of Alabama 1975; to amend legislative findings to address investment-oriented solicitations involving real property; to authorize the Alabama Securities Commission to determine fines and penalties for violations of unfair service agreements; to add Sections 8-42-1.1, 8-42-1.2, 8-42-1.3, 8-42-4, and 8-42-5 to the Code of Alabama 1975; to give the Alabama Securities Commission the power to regulate investment-oriented solicitations to homeowners, investigate complaints, and impose fines and penalties on violators; and would also make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 8-42-1, 8-42-2, and 8-42-3, Code of Alabama 1975, are amended to read as follows:

"§8-42-1

The Legislature finds and declares all of the following:

(1) Wholesaling real property occurs when a buyer enters into a contract for purchase and sale of a single-family residential property with the seller, ~~of the property thereby~~ creating the buyer's equitable interest in



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the property~~, the~~ The buyer then finds a subsequent purchaser willing to pay a higher price for the property and ~~then~~ assigns its interest to the subsequent purchaser for a fee.

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

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

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

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

a. ~~Disclosure of~~ Buyers engaging in wholesaling should be required to disclose the limited interest, marketing, and assignment of the buyer's equitable interest in the homeowner's property ~~should be required of buyers engaging in wholesaling~~.

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



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property.

c. Investment-oriented solicitations involving real property present risks comparable to those of securities transactions and warrant disclosure-based regulation.

d. Nothing in this section shall be construed to infringe on the private property rights of an individual to acquire real property for his or her own use, ownership, or benefit.

e. Nothing in this section shall be construed to require an individual to be licensed in order to acquire real property for his or her own use, ownership, or benefit.

"§8-42-2

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

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

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

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



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

(c) (1) A violation of this section is a Class C misdemeanor.

(2) In addition to criminal penalties, a person violating this section may be ~~liable to the person to whom disclosure is required in an amount equal to three times the fee or amount received by the buyer pursuant to the assignment~~ subject to civil fines and penalties as determined by the commission pursuant to Section 8-42-1.3.

(3) Enforcement of this section shall be governed by Section 8-42-1.2.

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

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

(f) This section shall not apply to predevelopment activity for residential subdivisions, condominiums, or other residential predevelopment activity.

(g) This section shall not apply to an individual acquiring real property for his or her own use, ownership, or benefit unless the individual intentionally acquires the real property for the benefit of a pass-through entity subject to this chapter or as a means to circumvent the intent of this



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chapter."

"§8-42-3

~~(a) For purposes of this section the following terms have the following meanings:~~

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

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

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

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

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

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

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

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

~~(b)~~ (a) This chapter does not apply to any of the following:

(1) A home warranty or ~~other type of~~ similar product



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that covers the cost of maintenance ~~of~~ for a major ~~housing~~ home system, such as plumbing or electrical wiring, for a set period of time from the date a house is sold.

(2) An insurance contract.

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

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

(5) Agreements to manage residential real estate.

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

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

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

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

~~(e)~~ (b) This section does not impair the rights granted by a mechanic's or materialman's lien under Division 8 of Article 5 of Chapter 11 of Title 35, or by ~~another~~ any other judicially imposed lien.

~~(d)~~ (c) If a service agreement is unfair under this ~~section~~ chapter, it is unenforceable.

~~(e)~~ (d) If a person enters into an unfair service agreement with a consumer, that agreement shall be deemed a





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197 deceptive act under the Deceptive Trade Practices Act,  
198 commencing with Section 8-19-1.

199 ~~(f)~~ (e) (1) No person shall record or cause to be  
200 recorded an unfair service agreement, or a notice or  
201 memorandum of an unfair service agreement, in ~~the~~ this state.

202 (2) If an unfair service agreement is recorded in this  
203 state, ~~it~~ the agreement shall not be deemed to provide actual  
204 or constructive notice against an otherwise bona fide  
205 purchaser of the residential real property to which ~~it~~ the  
206 agreement pertains, or against a creditor with a security  
207 interest in ~~the residential real property to which it pertains~~  
208 that property.

209 (3) A service provider who records or causes to be  
210 recorded an unfair service agreement, or a notice or  
211 memorandum ~~thereof~~ of an unfair service agreement, in this  
212 state is liable to an affected party for statutory damages in  
213 the amount of ten thousand dollars (\$10,000) ~~in statutory~~  
214 ~~damages~~.

215 ~~(g)~~ (f) If an unfair service agreement, or a notice or  
216 memorandum of an unfair service agreement, is recorded in the  
217 state, any party with an interest in the residential real  
218 property to which ~~it~~ the agreement pertains may take either or  
219 both of the following actions:

220 (1) Apply to the circuit court in the county where the  
221 recording ~~exists~~ is located to seek a court order declaring  
222 the agreement ~~is~~ void ~~and of no effect~~.

223 (2) In addition to the statutory damages described in  
224 subdivision ~~(f)~~ (e) (3), recover actual damages, plus costs and



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attorney fees as may be proven against the service provider who recorded the agreement."

Section 2. Sections 8-42-1.1, 8-42-1.2, 8-42-1.3, 8-42-4, and 8-42-5 are added to the Code of Alabama 1975, to read as follows:

§8-42-1.1

For purposes of this chapter, the following terms have the following meanings:

(1) COMMISSION. The Alabama Securities Commission.

(2) CONTACT. Any communication delivered by mail, courier, email, text message, social media message, telephone call, voicemail, prerecorded message, or similar method.

(3) INVESTMENT-ORIENTED REAL PROPERTY SOLICITATION. Any communication, offer, agreement, or transaction involving real property in which the expected economic benefit to the offeror, directly or indirectly, is derived primarily from resale, assignment, appreciation, fee extraction, or contractual arbitrage, rather than occupancy or personal use by the offeror.

(4) OFFEROR. Any person acting directly or indirectly on behalf of another person.

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

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

(7) SERVICE AGREEMENT. A contract under which a person agrees to provide services in connection with the purchase or



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sale of residential real estate.

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

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

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

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

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

(10) UNSOLICITED. Initiated without an affirmative request by the property owner within the preceding 12 months and not made pursuant to an existing written agreement with the property owner.

§8-42-1.2

(a) The commission shall have authority under this chapter to administer, implement, and enforce all regulated conduct, individuals, and entities in this chapter, along with issuing licenses for these activities. This authority extends to regulating investment-oriented real estate solicitations, assignments or offerings of assignments of equitable interests, recorded service agreements, unfair service agreements, unsolicited offers, and related practices. This exclusive authority applies regardless of any license an



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281 individual or entity may hold under any other legal provision.

282 (b) The commission may adopt rules necessary to carry  
283 out this chapter, including, but not limited to, rules  
284 governing:

285 (1) Consumer complaint intake and resolution  
286 procedures;

287 (2) Disclosure forms and content;

288 (3) Examination, reporting, and recordkeeping  
289 requirements;

290 (4) Any licensing, permitting, or registration program,  
291 and fees established, by rule;

292 (5) Any renewal, suspension, or revocation program  
293 established, by rule;

294 (6) Penalty schedules and remedial measures;

295 (7) Defining additional unfair, deceptive, or abusive  
296 practices; and

297 (8) Definitions and standards necessary to preclude  
298 circumvention of this chapter.

299 (c) The commission may:

300 (1) Conduct investigations and examinations;

301 (2) Require the production of documents and testimony;

302 (3) Issue subpoenas;

303 (4) Issue cease and desist orders;

304 (5) Suspend, revoke, or condition any license, permit,  
305 or registration established, by rule;

306 (6) Impose administrative fines and penalties for each  
307 violation;

308 (7) Order restitution, rescission, disgorgement, or



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309 other remedial relief;

310 (8) Prosecute criminal violations where authorized by  
311 law; and

312 (9) Coordinate with other agencies as authorized by  
313 law.

314 (d) The commission may bring an action in any court of  
315 appropriate jurisdiction for:

316 (1) Injunctive or other relief;

317 (2) Civil penalties;

318 (3) Restitution, rescission, or disgorgement;

319 (4) Enforcement of administrative orders;

320 (5) Recovery of investigative and enforcement costs;

321 and

322 (6) Appointment of a receiver.

323 (e) Nothing in this chapter shall be construed to limit  
324 criminal prosecution under any provision of law or to require  
325 exhaustion of administrative remedies before criminal  
326 enforcement.

327 (f) Enforcement under this chapter shall be in addition  
328 to, not in lieu of, remedies available under the Deceptive  
329 Trade Practices Act.

330 (g) Any contractual provision attempting to waive  
331 rights, remedies, or protections under this chapter is void  
332 and unenforceable as against public policy.

333 (h) The authority granted under this chapter applies to  
334 individual violations as well as to patterns or practices of  
335 conduct, whether arising under a single section or multiple  
336 sections of this chapter.



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(i) The existence or nonexistence of an enforcement action by the commission or other governmental agency pursuant to this section shall not bar, delay or diminish any private right of action.

§8-42-1.3

(a) The commission may impose administrative fines and penalties per violation. The civil penalty shall not exceed one million dollars (\$1,000,000) per violation, provided that the aggregate civil penalty assessed in a single administrative order shall not exceed one hundred million dollars (\$100,000,000). Each day an act, omission, or violation continues shall constitute a separate violation.

(b) In determining the amount of any civil penalty, the commission shall consider all relevant factors, including:

(1) The nature, gravity, and duration of the violation, including any irreparable harm or risk of harm to property owners;

(2) The degree of culpability, intent, or recklessness demonstrated by the violator;

(3) The facts, circumstances, and conduct in connection with the investment-oriented real estate activity at issue;

(4) The economic benefit, compensation, or other financial gain obtained, directly or indirectly, as a result of the violation;

(5) Any prior history of violations of this act, the Alabama Securities Act, or related consumer protection laws; and

(6) The violator's ability to pay the assessed penalty.



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(c) Civil penalties under this section may be assessed for any violation occurring within five years after the discovery of the fraud.

(d) All civil penalties recovered under this section, except for amounts representing the reasonable costs incurred by the commission in the investigation and enforcement of violations, shall be deposited into a consumer recovery fund which shall be administered by the commission. The fund shall be budgeted and allotted in accordance with Article 4 of Chapter 4 of Title 41 and Chapter 19 of Title 41. Money in the fund shall only be used to compensate individuals for economic losses resulting from fraudulent conveyances.

§8-42-4

(a) This section shall govern every unsolicited electronic, telephonic, or video communication, or written inquiry, solicitation, or mailing by any individual or entity, whether acting as a principal, investor, intermediary, or agent, that makes an investment-oriented real property solicitation and that expresses an interest in any of the following:

(1) Buying real property or an option to buy real property from the addressee.

(2) Buying the real property to which the written inquiry or mailing is addressed.

(3) Offering services relating to the sale of real estate.

(b) Any unsolicited communication or solicitation governed by this section that constitutes an



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investment-oriented real property solicitation by any individual or entity that expresses an interest in: (i) buying real property or an option to buy real property from the addressee; (ii) buying the real property to which such written inquiry or mailing is addressed; or (iii) offering services relating to the sale of real estate, shall include the following:

(1) At the top and at least two inches from any other text in the written inquiry or mailing, the following notice in capital letters: "THIS IS A SOLICITATION. THE SENDER IS CONTACTING YOU TO INQUIRE ABOUT YOUR INTEREST IN SELLING YOUR HOME OR OTHER REAL ESTATE. YOU ARE NOT OBLIGATED TO RESPOND."

(2) If the solicitation includes a monetary offer, after the text required in subdivision (1), the following notice in capital letters: "THIS OFFER MAY OR MAY NOT BE THE FAIR MARKET VALUE OF THE PROPERTY."

(3) If the solicitation includes a monetary offer less than the previous year's assessed value for ad valorem taxes set by the county tax assessor for the county where the property is located, following the text required in subdivision (2), the following notice in capital letters: "THIS OFFER IS LESS THAN THE COUNTY ASSESSED VALUE FOR THIS PROPERTY."

(4) On the front of the envelope or, if there is no envelope, on the part of the written inquiry or mailing that bears the postage stamp or postage amount, the following notice in capital letters: "SOLICITATION. YOU ARE UNDER NO OBLIGATION TO OPEN OR TO RESPOND."





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(5) On the front of the envelope or, if there is no envelope, on the part of the written inquiry or mailing that bears the postage stamp or postage amount, the following notice in capital letters: "YOU ARE ENCOURAGED TO SEEK GUIDANCE FROM A LICENSED REAL ESTATE AGENT OR ATTORNEY OF YOUR CHOOSING."

(6) The notices required in subdivisions (1) and (2) shall be:

a. In a font that matches the majority of the text of the written inquiry or mailing;

b. At least the size of the text of the written inquiry or mailing, and in any case no smaller than 16-point font; and

c. Displayed in a distinctly contrasting color.

(c) If an offeror makes an unsolicited offer to buy real property by sending a written agreement or purchase contract via mail or electronic means to an offeree, and the offeror does not use the assistance of a broker or brokerage service, as defined in Chapter 27 of Title 34, or a licensed attorney, as defined in Chapter 3 of Title 34, then the offeree may cancel the agreement or contract by mailing written notice of cancellation to the offeror, postmarked no later than 30 days from the date of the confirmation letter described in this section.

(d) An unsolicited offer to buy real property delivered by mail or electronic means is not considered accepted by the offeree until:

(1) The offeree signs the agreement or contract;

(2) The offeror receives the signed agreement or



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contract; and

(3) The offeror mails or electronically transmits a confirmation letter to the offeree confirming receipt of the signed agreement or contract, explaining the offeree's right to cancel, describing how to cancel, and stating the cancellation deadline.

(e) Cancellation of the agreement or contract by the offeree under this section shall not result in any penalty to the offeree. Any agreement or contract that penalizes an offeree for canceling within the prescribed 30-day period is void. The offeree shall return all payments received from the offeror no later than 30 days after cancellation.

(f) A third-party buyer who purchases the real property from the offeror before the offeree's right to cancel expires takes title subject to that right. If the offeree exercises the right to cancel, the title acquired by the third-party buyer becomes void, and title reverts immediately to the offeree. Such reversion shall occur by operation of law, and any conveyance derived from the voided title is likewise void.

(g) Violations of this section shall be enforced in accordance with Section 8-42-1.2.

(h) This chapter does not apply to properties that are:

(i) subject to an active written listing agreement with a licensed real estate broker; (ii) marketed for sale by the property owner or to an individual attempting to acquire an interest in real estate from another person with whom he or she has an existing business or personal relationship; (iii) or where the property interest being acquired is for his or



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her personal use or benefit.

§8-42-5

(a) This section applies to any individual or entity that makes an investment-oriented real property solicitation that makes an unsolicited written, electronic, or telephonic communication to a property owner for the purpose of doing any of the following:

- (1) Making an offer to purchase real property;
- (2) Securing an option to purchase real property; or
- (3) Soliciting services relating to the sale of real property.

(b) (1) No person or entity shall make more than three unsolicited communications to the same property owner regarding the same parcel of real property within any 12-month period.

(2) Each of the following constitutes a separate unsolicited communication:

- a. A written mailing or delivery;
- b. An electronic message, including email or text message; and
- c. A telephonic communication, including voicemail.

(3) Multiple communications made within a seven-day period shall be considered one communication for purposes of this section.

(c) (1) Each unsolicited communication shall include a clear and conspicuous method by which the property owner may opt out of further communications from that person or entity.

(2) Upon receipt of an opt-out request, the person or



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entity shall cease all further unsolicited communications regarding the property and honor the opt-out for a minimum of five years.

(3) Any unsolicited communication made after receipt of an opt-out request constitutes a separate violation.

(d) It shall be a violation of this chapter to:

(1) Use multiple affiliated entities or agents to circumvent the requirements of this section;

(2) Recharacterize substantially similar offers to circumvent the 12-month limitation; or

(3) Engage in harassment, coercion, or repeated communication intended to pressure a property owner.

(e)(1) A person subject to this section shall maintain records sufficient to demonstrate compliance, including:

a. Dates and methods of communication;

b. Identity of the communicating party; and

c. Opt-out requests received.

(2) Records shall be retained for not less than five years and shall be subject to examination by the Alabama Securities Commission.

(f) Violations of this section shall be enforced in accordance with Section 8-42-1.2.

(g) Nothing in this section shall be construed to prohibit a single, good-faith, unsolicited offer that complies with this chapter or restrict communications initiated by the property owner.

Section 3. This act shall become effective on October 1, 2026.