WEST VIRGINIA CODE CHAPTER 30 ARTICLE 38B

WV Legislature

§30-38B-1. Short title.

This article shall be known and may be cited as the "Unfair Real Estate Services Agreements Act".

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§30-38B-2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Consumer" means a person who is the recipient or anticipated recipient of any real estate service.

"Person" means any individual, corporation, corporate fiduciary, partnership, limited partnership, limited liability company, joint venture or association as defined by §30-40-4 of this code.

"Real estate service" means an act or acts requiring a real estate license in accordance with §30-40-3 of this code.

"Real estate service agreement" means a contract under which a real estate service provider agrees to provide any real estate service to a consumer.

"Real estate service provider" means any person providing or who is anticipated to provide real estate services to a consumer pursuant to a real estate service agreement.

"Recording" means presenting a document to a county recorder of deeds for official placement in the public land records.

"Residential real estate" means any interest in real property located within the state of West Virginia that consists of not less than one nor more than four residential dwelling units.

"Unfair Real Estate Service Agreement" means any real estate service agreement that:

(1) Purports to run with the land or to be binding on future owners of interests in the real property; or

(2) Purports to create or allow a lien, encumbrance or other security interest in the property; or

(3) Allows for the contract to be assigned without timely notification to the owner of the property; or

(4) Creates a listing agreement for a residential property that lasts for more than 365 days from the listing date.

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§30-38B-3. Enforceability.

Any unfair real estate service agreement entered after the effective date of this Act is void and unenforceable as a matter of law.

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§30-38B-4. Deceptive act.

If a person enters into an unfair real estate service agreement with a consumer that agreement shall per se be deemed a deceptive act under §46A-6-104 of this code.

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§30-38B-5. Recording prohibited; notice.

(a) No person shall record or cause to be recorded an unfair real estate service agreement or notice or memorandum thereof in this state.

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

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§30-38B-6. Petition to circuit court; recording of court order; costs and attorney's fees.

If an unfair real estate service agreement or a notice or memorandum thereof is recorded in this state, any party with an interest in the real property that is the subject of that agreement may petition the circuit court, in the county where the recording exists, for a court order declaring the agreement unenforceable. This court order shall be recorded in the office of the county clerk and state that the agreement is unenforceable. Any person that files a petition pursuant to this subsection shall be entitled to reasonable attorney's fees and costs related to the petition. No provision of this section shall preclude an action for slander of title, and an action for slander of title and an action under this article may be brought in the same action.

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§30-38B-7. Right of recovery.

(a) Any consumer with an interest in real property that is the subject of an unfair real estate service agreement, whether or not any lien or other notice is filed against the property in the office of the county clerk, may bring a civil action against the real estate service provider for violations of this article and the court may award any of the following:

(1) Such preliminary and other equitable or declaratory relief as may be appropriate;

(2) An order that the consumer is not required to repay or reimburse any moneys paid to the consumer by the real estate service provider;

(3) Actual damages suffered by the consumer, with a minimum amount of $5,000, unless the consumer is 60 years or older, in which case the minimum damages shall be $15,000.

(4) Reasonable attorneys' fees and other litigation costs reasonably incurred.

(b) This section does not replace or supersede any other remedy at law or equity that the consumer may have.

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§30-38B-8. Relationship to other laws.

Nothing in this law shall alter or amend any part of §30-40-1 *et seq*. of this code.

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