

House File 475 - Introduced

HOUSE FILE 475
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 175)

A BILL FOR

1 An Act relating to unfair residential real estate service
2 agreements, providing penalties, and making penalties
3 applicable.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 558B.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. a. "*Common interest community*" means real estate
5 described in a declaration with respect to which a person,
6 by virtue of the person's ownership of a unit, is obligated
7 to pay for a share of real estate taxes, insurance premiums,
8 maintenance, or improvement of, or services or other expenses
9 related to, common elements, other units, or other real estate
10 described in the declaration. "*Common interest community*"
11 includes a planned community, a cooperative under chapter 499A,
12 and a horizontal property regime under chapter 499B.

13 b. "*Common interest community*" does not include any of the
14 following:

15 (1) A covenant that requires the owners of separate parcels
16 of real estate to share costs or other obligations related to a
17 wall, driveway, well, or other similar structure, unless all
18 such owners consent in writing to the creation of a common
19 interest community.

20 (2) Real estate described in paragraph "a" if all units are
21 owned by a single owner.

22 2. "*Consumer*" means a natural person being provided a
23 service under a service agreement, or the natural person's
24 legal representative.

25 3. "*Record*" means presentation of a document to a county
26 recorder in this state for official placement in the public
27 land records.

28 4. "*Residential real estate*" means real property located
29 in this state which is used primarily for personal, family,
30 or household purposes and is improved by one to four dwelling
31 units.

32 5. "*Service agreement*" means a contract under which a person
33 agrees to provide a service in connection with the maintenance
34 of, the purchase of, or the sale of, residential real estate.

35 Sec. 2. NEW SECTION. 558B.2 Unfair service agreements —

1 **penalties.**

2 1. A service agreement shall be considered unfair under this
3 section if a service that is covered by the service agreement
4 is not required to be completely performed within one year
5 after the date on which the service agreement is executed, and
6 the service agreement has any of the following characteristics:

7 a. The service agreement purports to run with the land or
8 to be binding on future owners of interests in the residential
9 real estate that is the subject of the service agreement.

10 b. The service agreement permits assignment of the right to
11 provide service under the service agreement without requiring
12 notice to, and the consent of, the owner of the residential
13 real estate that is the subject of the service agreement.

14 c. The service agreement purports to create a lien,
15 encumbrance, or other real property security interest on the
16 residential real estate that is the subject of the service
17 agreement.

18 2. If a service agreement is unfair under this section, the
19 service agreement shall be unenforceable.

20 3. If a person enters into an unfair service agreement
21 with a consumer, the person commits an unlawful practice under
22 section 714.16.

23 4. a. A person shall not cause an unfair service agreement,
24 or a notice or memorandum of an unfair service agreement, to
25 be recorded.

26 b. A person who causes an unfair service agreement, or a
27 notice or memorandum of an unfair service agreement, to be
28 recorded commits an aggravated misdemeanor.

29 c. A county recorder may refuse to record an unfair service
30 agreement.

31 d. If an unfair service agreement is recorded, the recorded
32 service agreement shall not provide actual or constructive
33 notice against an otherwise bona fide purchaser or creditor,
34 or actual or constructive notice against heirs or other
35 successors-in-interest to the residential real estate that is

1 the subject of the recorded service agreement.

2 *e.* If an unfair service agreement or a notice or memorandum
3 of an unfair service agreement is recorded, any person with an
4 interest in the residential real estate that is the subject
5 of the service agreement may apply to a district court in the
6 county in which the service agreement is recorded for a court
7 order declaring the service agreement unenforceable.

8 *f.* If an unfair service agreement or a notice or memorandum
9 of an unfair service agreement is recorded, any person with an
10 interest in the residential real estate that is the subject
11 of the recorded service agreement may recover actual damages,
12 costs, and attorney fees as may be proven against the person
13 who recorded the service agreement.

14 5. This section does not apply to any of the following:

15 *a.* A home warranty or similar agreement that covers the
16 cost of maintenance for a fixed period of time of a major home
17 system including but not limited to plumbing, electrical,
18 heating, ventilation, or air conditioning.

19 *b.* An insurance contract.

20 *c.* An option or a right of refusal to purchase residential
21 real estate.

22 *d.* A maintenance or repair agreement entered into by the
23 homeowners' association of a common interest community.

24 *e.* A mortgage loan, or a commitment to make or to receive a
25 mortgage loan.

26 *f.* A security agreement under the uniform commercial code
27 related to the sale or rental of personal property or fixtures.

28 *g.* Water, sewer, electrical, telephone, cable, internet, or
29 any other utility service providers.

30 6. This section shall not be construed to impair a person's
31 rights established by a mechanics' lien under chapter 572.

32 Sec. 3. Section 714.16, subsection 2, Code 2023, is amended
33 by adding the following new paragraph:

34 NEW PARAGRAPH. *g.* It shall be an unlawful practice for a
35 person to violate section 558B.2, subsection 3.

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EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to unfair residential real estate service agreements (agreement).

An agreement shall be considered unfair under the bill if a service that is covered by the agreement is not required to be completely performed within one year after the date on which the agreement is executed, and the agreement has any of the characteristics detailed in the bill. "Service agreement" is defined in the bill as a contract under which a person agrees to provide a service in connection with the maintenance of, the purchase of, or the sale of, residential real estate (real estate). "Residential real estate" is also defined in the bill.

If an agreement is unfair, the agreement shall be unenforceable. If a person enters into an unfair agreement with a consumer, the person commits an unlawful practice. Several types of remedies are available if a court finds that a person has committed an unlawful practice, including injunctive relief, disgorgement of moneys or property, and a civil penalty not to exceed \$40,000 per violation.

The bill prohibits a person from causing an unfair agreement, or a notice or memorandum (memo) of an unfair agreement, to be recorded. A person who violates this prohibition commits an aggravated misdemeanor. An aggravated misdemeanor is punishable by confinement for no more than two years and a fine of at least \$855 but not more than \$8,540.

A county recorder may refuse to record an unfair agreement. If an unfair agreement is recorded, the recorded agreement shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor, or against heirs or other successors-in-interest to the real estate that is the subject of the agreement. If an unfair agreement or a notice or memo of an unfair agreement is recorded, any person

1 with an interest in the real estate that is the subject of
2 the agreement may apply to a district court in the county in
3 which it is recorded for a court order declaring the agreement
4 unenforceable, and any person with an interest in the real
5 estate that is the subject of the agreement may recover actual
6 damages, costs, and attorney fees as may be proven against the
7 person that recorded the agreement.

8 The bill does not apply to a home warranty or similar
9 agreement, an insurance contract, an option or right of refusal
10 to purchase real estate, a maintenance or repair agreement
11 entered into by the homeowners' association of a common
12 interest community, a mortgage loan or a commitment to make or
13 receive a mortgage loan, a security agreement under the uniform
14 commercial code relating to the sale or rental of personal
15 property or fixtures, or to utility service providers. "Common
16 interest community" is defined in the bill. The bill shall
17 also not be construed to impair a person's rights established
18 by a mechanics' lien.