



North Dakota Real Estate Commission
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May 23, 2023 -- News from the N.D. Real Estate Commission –

40-year home listing contracts, “Homeowner Benefit Agreements” could be unfair service agreements

Long-term home listing agreements could be deemed “unfair” in North Dakota after a new chapter to NDCC title 47 takes effect August 1, 2023.

The N.D. Real Estate Commission is not aware of any long-term home listing agreements being promoted in this state by N.D.-licensed real estate brokerages at this time. However, after the new law comes into effect on August 1, 2023, if N.D. homeowners sign a long-term agreement to list their home, and services are not to be performed within 1 year:

1. Homeowners could then bring an action to terminate the agreement in district court.
2. If the court finds the agreement is unfair under this new chapter, the agreement is void and unenforceable.
3. The court order must be filed for recording, along with a copy of the original service agreement, if that agreement was not already of record.
4. If the court finds the agreement is unfair, homeowners will receive actual damages arising from the unfair service agreement, actual attorney’s fees proven against the service provider, and costs incurred by the homeowner.

The new chapter does not indicate whether a homeowner can challenge an agreement in court under the chapter if the agreement was signed prior to August 1, 2023.

Under the new law, “A service agreement is deemed unfair under this chapter if the service obligations of the agreement are not to be performed within 1 year after the agreement is executed and the agreement” also meets 1 or more of the following criteria:

- a. “Purports to be a covenant running with the land as described in section 47-04-25;
- b. Purports to be binding on future owners of interests in the real property;
- c. Allows for assignment of the right to provide service without notice and agreement of the owner of residential real estate; or
- d. Purports to create a lien, encumbrance, or other real property security interest.”

2022-2023 North Dakota Real Estate Commission: Steven Link, chair; Tate Cymbaluk, vice chair; members: Scott Breidenbach, Sandra Meyer, and Steven Bitz. Executive director: Jeanne Prom. Legal counsel: David Phillips.

The new “chapter does not:

- a. Apply to a home warranty or other type of similar product that covers the cost of maintenance of a major housing system for a set period of time from the date a house is sold;
- b. Apply to an insurance contract;
- c. Apply to an option to purchase or right of refusal;
- d. Apply to a maintenance or repair agreement executed between a landowner and a homeowners’ association in a common interest community; and
- e. Impair the rights and remedies in chapter 35-27.”

The new law applies to “residential real estate” which “means real property located in this state which is used primarily for personal, family, or household purposes and which is improved by 1 to 4 dwelling units.”

At the 2023 N.D. legislature, the N.D. licensed real estate community and allied organizations testified to their concerns about vulnerable populations and other states’ experiences with long-term listing agreement practices, described below:

- Some brokerages in other states offer cash of a few hundred or a thousand dollars up-front to homeowners in those states when they sign a long-term service agreement to list their home with the brokerage at some point in the future.
- These agreements may be most appealing to low-income, or other vulnerable, homeowners.
- The agreement is sometimes called a “Homeowner Benefit Agreement.”
- In these agreements, homeowners agree to list their home with the brokerage any time over the next 40 years.
- The brokerage secures the agreement with a lien on the homeowners’ title, binding the owners and their heirs.
- Terminating or breaching the agreement can result in the homeowners paying fees and costs far exceeding the initial cash amount paid to them by the brokerage, even before the brokerage has done any work for the homeowners.

To protect the N.D. public from the potential harms of long-term home listing agreements, the N.D. legislature unanimously passed HB 1188 earlier this year. See the law changes, which add a new chapter to title 47, property law, [here](#).

Check out realestatend.org for the complete current license law [here](#), and other information and updates.

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