

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Prohibition of Unfair Service Agreements Act.

6 Section 5. Purpose. The General Assembly declares that it  
7 is the purpose of this Act:

8 (1) to prohibit the use of service agreements that are  
9 unfair to an owner of residential real estate or to  
10 persons who may become owners of that real estate in the  
11 future;

12 (2) to prohibit the recording of unfair service  
13 agreements so that the public records will not be clouded  
14 by them and future owners will not be put to the burden of  
15 bringing suits to remove them from their chains of title;  
16 and

17 (3) to provide remedies for owners who are  
18 inconvenienced or damaged by the recording of unfair  
19 service agreements.

20 Section 10. Definitions. As used in this Act:

21 "Person" means a natural person, partnership, association,  
22 cooperative, corporation, trust, or other legal entity.

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

3 "Residential real estate" means real property located in  
4 this State that is used primarily for personal, family, or  
5 household purposes and is improved by one to 4 dwelling units.

6 "Service agreement" means a contract under which a person  
7 agrees to provide services in connection with the maintenance  
8 of or purchase or sale of residential real estate.

9 "Service provider" means an individual or entity that  
10 provides services to a person.

11 Section 15. Characteristics of unfair service agreements.

12 (a) A service agreement is unfair under this Act if any  
13 part of the service subject to the agreement is not to be  
14 performed within one year after the service agreement is  
15 entered into and the service agreement has any of the  
16 following characteristics:

17 (1) the service agreement purports to run with the  
18 land or to be binding on future owners of interests in the  
19 real property;

20 (2) the service agreement allows for assignment of the  
21 right to provide service without notice to and consent of  
22 the owner of residential real estate; or

23 (3) the service agreement purports to create a lien,  
24 encumbrance, or other real property security interest.

25 (b) This Act does not apply to:

1           (1) a home warranty or similar product that covers the  
2           cost of maintenance of a major home system, including  
3           plumbing, heating, ventilation, air conditioning, or  
4           electrical wiring, for a fixed period;

5           (2) an insurance contract;

6           (3) an option or right of refusal to purchase the  
7           residential real estate;

8           (4) a declaration created in the formation of a common  
9           interest community or an amendment to the declaration;

10          (5) a maintenance or repair agreement entered into by  
11          a homeowners' association in a common interest community;

12          (6) a mortgage loan or a commitment to make or receive  
13          a mortgage loan;

14          (7) a security agreement under the Uniform Commercial  
15          Code relating to the sale or rental of personal property  
16          or fixtures; or

17          (8) water, sewer, electrical, telephone, cable, or  
18          other utility service providers.

19          (c) This Act shall not impair rights and remedies granted  
20          under the Mechanics Lien Act.

21          Section 20. Unfair service agreements unenforceable. If a  
22          service agreement is unfair under this Act it is unenforceable  
23          and shall not create a contractual obligation.

24          Section 25. Deceptive business practice. Entering into an

1 unfair service agreement with a consumer constitutes an  
2 unlawful practice under the Consumer Fraud and Deceptive  
3 Business Practices Act. All remedies, penalties, and authority  
4 granted to the Attorney General by the Consumer Fraud and  
5 Deceptive Business Practices Act shall be available to the  
6 Attorney General for the enforcement of this Act.

7 Section 30. Recording prohibited.

8 (a) No person shall knowingly record or knowingly cause to  
9 be recorded an unfair service agreement or a notice or  
10 memorandum of the unfair service agreement.

11 (b) Notwithstanding any law to the contrary, a county  
12 recorder may refuse to accept for recordation an unfair  
13 service agreement.

14 (c) If an unfair service agreement is recorded, it shall  
15 not provide actual or constructive notice against a bona fide  
16 purchaser or creditor.

17 Section 35. Remedies. If an unfair service agreement or a  
18 notice or memorandum of the unfair service agreement is  
19 recorded, any person with an interest in the real property  
20 that is the subject of that agreement may apply to a court in  
21 the county where the recording exists to record a court order  
22 declaring the agreement unenforceable and that person may  
23 recover actual damages, costs, and attorney's fees as may be  
24 proven against the service provider who recorded the

1 agreement.

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.