



South Carolina
Department of Labor, Licensing and Regulation



Real Estate Commission

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Revised Advisory regarding S.881 (Prohibition of Unfair Real Estate Service Agreements), which was signed by the Governor on May 20, 2024.

S.881/Act No. 165 - Prohibition of Unfair Real Estate Service Agreements

Effective Date: May 20, 2024 (Signature of the Governor)

The Prohibition of Unfair Real Estate Service Agreements Act ("the Act"), found at newly-added S.C. Code Ann. § 27-28-10 et seq., prohibits the use of real estate service agreements that are unfair to an owner of residential real estate or to other persons who may become owners of that real estate in the future. The Act also prohibits the recording of such residential real estate service agreements so that the public records will not be clouded by them and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements. Further, the Act allows the South Carolina Attorney General to enforce violations of the Act under the South Carolina Unfair Trade Practices Act.

The Act defines a "real estate service agreement" as "a written contract between a service provider and the owner or potential buyer of residential real estate to provide services, current or future, in connection with the maintenance, purchase, or sale of residential real estate." A real estate service agreement is deemed to be unfair, void, and in violation of Chapter 28 of Title 27 if:

[T]he agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

- (1) run with the land or bind future owners of residential real estate identified in the real estate service agreement;
- (2) allow for the assignment of the right to provide service without notice or consent of the owner or buyer; or
- (3) create a lien, encumbrance, or other real property security interest.

Importantly, licensees of the Commission, as well as individuals, partnerships, corporations, companies, and associations are included in the definition of a "service provider," and should review the Act closely, as it details which real estate service agreements are unfair. Additionally, the Act provides a list of agreements that are not prohibited by the Act. The full text of the Act can be found at the following link: https://www.scstatehouse.gov/sess125_2023-2024/bills/881.htm

The Act became effective upon the approval of the Governor, which was May 20, 2024. S.C. Code §27-28-40(A) states that any recorded unfair real estate service agreement or notice or memorandum of an unfair real estate service agreement is **void** as of the passage of the Act on May 20, 2024. Therefore, the Act applies to any unfair real estate service agreements that are recorded on or after May 20, 2024, or that

are executed, modified, extended, or amended on or after May 20, 2024. Further, the Commission believes the Act and its remedies also apply to any unfair real estate service agreements recorded, executed, modified, extended, or amended **prior to May 20, 2024, if a Service Provider attempts to enforce any terms of the unfair real estate service agreement** on or after May 20, 2024.

Actions That Can Be Taken

Licensees of the Commission, attorneys, members of the public, and residential real estate owners that become aware of violations of the Act may take any of the following actions, or a combination of the actions below:

- 1) Inform the service provider of Act 165 of 2024 (in writing) and request the service provider issue a release (in writing) to the residential real estate owner.
- 2) You may contact the South Carolina Attorney General's Office, in writing, to request enforcement of the Unfair Real Estate Service Agreement Act at:
 - a. South Carolina Attorney General's Office
Unfair Real Estate Service Agreement
P.O. Box 11549
Columbia, South Carolina 29211
 - b. <https://www.scag.gov/about-the-office/contact-us/> via the Contact Constituent Services electronic form.

Any such requests for enforcement should include copies of the unfair real estate service agreement, any documents filed or recorded (such as a filing with the Register of Deeds regarding the property), and any communications you or the residential real estate owner have had with the service provider regarding that Agreement, including any communications from the service provider attempting to enforce the Agreement.

- 3) If a specific licensee subject to licensing action by the Commission attempts to enforce any terms of an unfair real estate service agreement on or after May, 20, 2024, or executes, modifies, extends, or amends an unfair real estate service agreement on or after May 20, 2024, then you may file a complaint with the Commission via: <https://eservice.llr.sc.gov/Complaints/POL/POLSearch>.
- 4) The residential real estate owner may contact a South Carolina licensed attorney to discuss whether bringing a legal action against the service provider is possible and reasonable in their specific situation. S.C. Code §27-28-40(C).