

Florida Senate Bill Tries to Counter MV Realty's 40-year Liens by Regulating "Residential Loan Alternative Agreements"

Article

Lowndes

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In a move to protect homeowners from deceptive practices, the Florida Senate has passed CS/CS/SB 770, a bill that regulates residential loan alternative agreements for the sale of residential real property. The bill, which became law on May 25, 2023, and is now codified as Chapter No. 2023-117, aims to prevent certain unscrupulous practices and safeguard the rights of homeowners.

Under the new law, a "residential loan alternative agreement" is defined as a signed writing or contract granting exclusive rights to a broker, with an effective duration of more than two years, and requiring monetary compensation to the seller or owner. However, the bill explicitly prohibits such agreements from authorizing the placement of a lien or encumbrance on residential real property, ensuring that homeowners' assets remain protected.

Furthermore, the law states that residential loan alternative agreements cannot be enforced through liens or constructive trusts on the property or its proceeds upon sale. This provision prevents brokers from exerting undue influence or imposing financial burdens on homeowners through unfair contractual obligations.

In addition, the bill stipulates that a residential loan alternative agreement becomes void if listing services do not commence within 90 days after the agreement is executed by both parties. This provision ensures that homeowners receive timely services and discourages brokers from entering into agreements without fulfilling their obligations. Failure to comply with these requirements renders the agreement unenforceable in law or equity and prohibits its recording by the clerk of the circuit court.

To further protect homeowners, the bill designates violations of its provisions as unfair or deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The violators are subject to penalties and remedies provided by FDUTPA, which include civil

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penalties of up to \$10,000 for willful violations. These measures aim to deter real estate professionals from engaging in deceptive practices and provide homeowners with recourse in case of unfair treatment.

The new law, which takes effect on July 1, 2023, comes in response to recent cases of deceptive practices in the real estate industry. Earlier this year, the Florida Attorney General filed a complaint against MV Realty, a brokerage firm, and its principals for engaging in unfair practices under FDUTPA. The Attorney Generals for Massachusetts and Pennsylvania filed similar lawsuits against MV Realty. The defendants allegedly offered homeowners cash loans in exchange for exclusive listing agreements and subsequently filed long-term liens on the properties, requiring substantial payments unrelated to real estate services. These practices have highlighted the need for stronger regulations to protect homeowners and ensure transparency in real estate transactions. One question will be how Florida courts will enforce the new law with respect to contracts that were executed before July 1st.

With the passage of CS/CS/SB 770, Florida aims to establish clear guidelines and safeguards to protect homeowners from unfair and deceptive practices in residential loan alternative agreements. By implementing stricter regulations and imposing penalties for violations, the state seeks to create a more transparent and accountable real estate industry.