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## OLR Bill Analysis

sSB 201 (File 156, as amended by Senate "A" and "B")\*

***AN ACT CONCERNING THE ATTORNEY GENERAL'S RECOMMENDATIONS REGARDING PRICE DISCLOSURE, SERVICE AGREEMENTS, THE NEW HOME CONSTRUCTION GUARANTY FUND AND THE CONNECTICUT UNFAIR TRADE PRACTICES ACT.***

### SUMMARY

This bill prohibits real estate listing providers from entering into “unfair real estate listing agreements” with residential property owners, makes these agreements unenforceable, and makes violations of this prohibition an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA). The bill prohibits these agreements from being recorded or rerecorded in the land records and establishes certain legal remedies for property owners if they are recorded. It also requires real estate listing providers that (1) previously entered into real estate listing agreements to rerecord the agreement on the land records and (2) record or rerecord these agreements and assign their rights under these agreements to notify certain individuals and officials of the assignment.

The bill also authorizes the Department of Consumer Protection (DCP) to investigate violations of and enforce the terms of an “assurance of voluntary compliance” under CUTPA and makes these violations a willful CUTPA violation. It also allows these assurances to require the payment of investigative costs.

\*Senate Amendment “A” eliminates provisions (1) requiring anyone selling goods or services in the state to disclose their total price and (2) expanding eligibility for the New Home Construction Guaranty Fund to allow consumers to recuperate money from the fund for judgments awarded against certain people with an ownership interest in a new home construction company who violated certain laws. It also modifies the provisions on real estate listing agreements by, among other things,

(1) changing the term “unfair service agreement” to “unfair real estate listing agreement,” (2) narrowing the definition of these agreements to exclude real estate maintenance services, and (3) adding the notice requirement for assignments of real estate listing providers’ rights.

\*Senate Amendment “B” modifies the provisions on real estate listing agreements by, among other things, (1) prohibiting the rerecording of an unfair real estate listing agreement; (2) allowing anyone to petition the court to declare an agreement void and unenforceable, rather than apply to the court to do so; (3) adding specific requirements for these petitions and their review by the court; (4) requiring that any damages, costs, and attorney’s fees awarded by the court be in lieu of those awarded in any CUTPA action brought under the bill; and (5) making various other minor changes.

EFFECTIVE DATE: July 1, 2024, except the assurance of voluntary compliance provisions are effective upon passage.

## **§§ 1-6 — UNFAIR REAL ESTATE LISTING AGREEMENTS**

### ***Prohibition on Entering Into Unfair Real Estate Listing Agreements (§§ 1 & 2)***

The bill prohibits real estate listing providers from entering into “unfair real estate listing agreements” with persons (i.e., people, businesses, and other organizations) who hold an interest in residential property with one to four units (i.e., residential property). Under the bill, a “real estate listing provider” is a person who is a party to a real estate listing agreement, and provides, or agrees to provide, a real estate listing under this agreement. A “real estate listing agreement” is a contract in which a real estate listing provider agrees to provide a real estate listing to anyone in connection with selling residential real estate.

Under the bill, an “unfair real estate listing agreement” is an agreement entered into on or after July 1, 2024, that does not require the real estate listing provider to perform any part of the listing within one year of when the parties entered into the agreement and:

1. claims to run with the land or bind the property’s future owners;

2. allows the real estate listing provider to assign the rights to provide the listing under the agreement without prior notice to, or consent from, the property owner; or
3. claims to create a lien or encumbrance on, or security interest in, the property.

The bill makes unfair real estate listing agreements unenforceable.

***Prohibition on Recording Unfair Real Estate Listing Agreements in the Land Records (§ 3)***

The bill (1) prohibits persons from taking action to record or rerecord unfair real estate listing agreements or any notices or memorandums about these agreements in the land records and (2) allows town clerks to refuse to receive these documents for recording or rerecording. Under the bill, any agreements, notices, and memoranda that are recorded or rerecorded are not considered to give actual or constructive notice to the applicable property's purchaser or creditor.

***Requirement to Rerecord Prior Real Estate Listing Agreements (§ 4)***

By July 31, 2024, real estate listing providers that entered into a real estate listing agreement on or before June 30, 2024, must rerecord the agreement and record a notice of the agreement with the town clerk of the town where the residential property is located if the agreement (1) claims to run with the land or binds future holders of interest in the residential real property; (2) allows for any assignment of any right to list the property without first notifying and gaining consent from the property's owner; or (3) claims to create any lien, encumbrance, or other security interest in the property. These notices must include:

1. the title "Notice of Real Estate Listing Agreement" printed in at least 14-point bold type;
2. a legal description of the residential property subject to the agreement;
3. the fee amount, or calculation methodology, specified in the

agreement;

4. the agreement's expiration date or circumstances under which it will expire; and
5. the real estate listing provider's name, address, telephone number, and notarized signature (or that of its authorized officer or employee, as applicable).

If a real estate listing provider fails to rerecord a real estate listing agreement and record a notice of the agreement as described above by July 31, 2024, the agreement is void and unenforceable, and any interest in the applicable property may be conveyed free and clear of the agreement.

***Court Order to Declare an Unfair Real Estate Listing Agreement Void and Unenforceable (§ 5)***

If an unfair real estate listing agreement (or notice or memorandum about the agreement) is recorded or rerecorded, any person who holds an interest in the property or the attorney general can petition the Superior Court for an order declaring the agreement void and unenforceable. The petition must include the:

1. address of the residential real property;
2. name, address, and phone number of the real estate listing provider party to the agreement;
3. name and address of each person known to hold an interest in the property; and
4. name of the town, and volume and page number of the land records where the agreement, notice, or memorandum is recorded or rerecorded.

Upon filing a petition, the petitioner must give reasonable notice to the attorney general and anyone holding an interest in the property that a petition has been filed with the court. The petitioner must include in the complaint a statement certifying that the petitioner has provided

reasonable notice. The statement must include the (1) names of all persons who hold an interest in the residential real property, if known; (2) nature of their interests; and (3) way in which the petitioner gave the reasonable notice. If the petitioner does not provide reasonable notice, the court may direct the petitioner to do so and certify to the court that they have done so.

The bill requires the court, while reviewing the petition, to only consider evidence as to whether the real estate listing provider recorded or rerecorded, or caused to be recorded or rerecorded, an unfair real estate listing agreement, notice, or memorandum. The court may issue an order declaring the agreement, notice, or memorandum to be void and unenforceable once it is shown that it does not comply with the bill's provisions on unfair real estate listing agreements. The order must (1) include the volume and page number of the land records where the agreement, notice, or memorandum is recorded or rerecorded, and (2) direct the applicable town clerk to discharge the recording or rerecording as void and unenforceable.

Under the bill, if an unfair real estate listing agreement (or notice or memorandum of the agreement) is recorded or rerecorded, anyone with an interest in the property may recover the actual damages, costs, and attorney's fees that may be proven against the real estate listing provider that recorded the agreement. These actual damages, costs, and attorney's fees are in lieu of any damages, costs, and attorney's fees awarded because of any CUTPA enforcement action brought against a real estate listing provider under the bill.

***Notice of Assignment of Real Estate Listing Provider's Rights (§ 6)***

The bill requires real estate listing providers who record or rerecord an unfair real estate listing agreement, notice, or memorandum (including those recorded before July 1, 2024) and assign the real estate listing provider's rights under the agreement to provide notice of this assignment to:

1. any person who holds any interest in the property that is subject

- to the agreement,
2. the town clerk of the town where the applicable property is located, and
  3. the attorney general.

## **§§ 7-9 — ASSURANCES OF VOLUNTARY COMPLIANCE UNDER CUTPA**

Existing law allows the DCP commissioner to accept an assurance of voluntary compliance from anyone alleged to have violated CUTPA. These assurances generally specify the terms by which the person (usually a company) will come into compliance with CUTPA. By law, they are not admissions of violations and an investigation closed by an assurance of voluntary compliance may be reopened at any time.

The bill authorizes the DCP commissioner to investigate violations of and enforce the terms of an assurance of voluntary compliance and ask the attorney general to apply to the Superior Court for relief in the same way as the law allows for CUTPA violations. The bill also makes these violations a willful violation under CUTPA. In doing so, it allows the attorney general to ask the court to impose a civil penalty of up to \$5,000 for each violation.

Lastly, the bill allows the assurances to require the person to pay for investigative costs. Existing law allows them to include restitution costs.

## **BACKGROUND**

### **CUTPA**

By law, CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and

up to \$25,000 for a restraining order violation.

**Related Bill**

sHB 5236 (File 103), favorably reported by the General Law Committee, allows the DCP commissioner to impose a civil penalty of up to \$5,000 for CUTPA violations, after an administrative hearing.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 22 Nay 0 (03/12/2024)

Judiciary Committee

Joint Favorable

Yea 33 Nay 2 (04/22/2024)