

HOUSE BILL 728

N1, C3

3lr0789
CF SB 579

By: **Delegate Amprey**

Introduced and read first time: February 8, 2023

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2023

CHAPTER _____

1 AN ACT concerning

2 **Residential Property – ~~Exclusive Listing Agreements – Limit on Duration~~**
3 **Service Agreements – Prohibitions**

4 FOR the purpose of prohibiting ~~an exclusive listing agreement for the sale of residential~~
5 ~~property from being effective for more than 1 year; requiring the State Real Estate~~
6 ~~Commission to include an assessment of the use of exclusive listing agreements in a~~
7 ~~certain annual report; and generally relating to exclusive listing agreements~~ certain
8 service agreements for the maintenance, purchase, or sale of residential property
9 from containing certain provisions; prohibiting the recordation of service agreements
10 prohibited under this Act; and generally relating to residential property and service
11 agreements.

12 BY adding to

13 Article – Real Property

14 Section ~~10-803~~ 14-801 through 14-809 to be under the new subtitle “Subtitle 8.

15 Residential Property Service Agreements”

16 Annotated Code of Maryland

17 (2015 Replacement Volume and 2022 Supplement)

18 ~~BY repealing and reenacting, without amendments,~~

19 ~~Article – Business Occupations and Professions~~

20 ~~Section 17-101(a), (d), (l), and (n)~~

21 ~~Annotated Code of Maryland~~

22 ~~(2018 Replacement Volume and 2022 Supplement)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~BY repealing and reenacting, with amendments,
 Article – Business Occupations and Professions
 Section 17-210
 Annotated Code of Maryland
 (2018 Replacement Volume and 2022 Supplement)~~

BY repealing and reenacting, with amendments,
 Article – Commercial Law
 Section 13-301(14)(xxxv)
 Annotated Code of Maryland
 (2013 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,
 Article – Commercial Law
 Section 13-301(14)(xxxvi)
 Annotated Code of Maryland
 (2013 Replacement Volume and 2022 Supplement)

BY adding to
 Article – Commercial Law
 Section 13-301(14)(xxxvii)
 Annotated Code of Maryland
 (2013 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Real Property

~~10-803.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 INDICATED:~~

~~(2) (i) “EXCLUSIVE LISTING AGREEMENT” MEANS ANY
 AGREEMENT BETWEEN AN OWNER OF RESIDENTIAL PROPERTY AND ANOTHER
 PERSON THAT PROVIDES THE PERSON WITH THE EXCLUSIVE RIGHT TO SELL THE
 RESIDENTIAL PROPERTY.~~

~~(ii) “EXCLUSIVE LISTING AGREEMENT” INCLUDES:~~

~~1. ANY AGREEMENT BETWEEN AN OWNER OF
 RESIDENTIAL PROPERTY AND A REAL ESTATE BROKER, AS DEFINED IN § 17-101 OF
 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE, THAT PROVIDES THE
 REAL ESTATE BROKER WITH THE EXCLUSIVE RIGHT TO SELL THE RESIDENTIAL
 PROPERTY; AND~~

1 ~~2. ANY AGREEMENT BETWEEN AN OWNER OF~~
2 ~~RESIDENTIAL PROPERTY AND ANOTHER PERSON THAT PROVIDES THE PERSON WITH~~
3 ~~THE EXCLUSIVE RIGHT TO SELL THE RESIDENTIAL PROPERTY IN THE FUTURE.~~

4 ~~(3) "RESIDENTIAL PROPERTY" MEANS REAL PROPERTY IMPROVED~~
5 ~~BY FOUR OR FEWER SINGLE FAMILY DWELLING UNITS THAT ARE DESIGNED~~
6 ~~PRINCIPALLY AND ARE INTENDED FOR HUMAN HABITATION.~~

7 ~~(B) THIS SECTION APPLIES ONLY TO AN EXCLUSIVE LISTING AGREEMENT~~
8 ~~ENTERED INTO ON OR AFTER JUNE 1, 2023.~~

9 ~~(C) (1) AN EXCLUSIVE LISTING AGREEMENT MAY NOT BE EFFECTIVE FOR~~
10 ~~MORE THAN 1 YEAR.~~

11 ~~(2) AN EXCLUSIVE LISTING AGREEMENT THAT PURPORTS TO BE~~
12 ~~EFFECTIVE FOR MORE THAN 1 YEAR SHALL BE VOID AND OF NO FURTHER EFFECT~~
13 ~~AFTER 1 YEAR.~~

14 ~~Article — Business Occupations and Professions~~

15 ~~17-101.~~

16 ~~(a) In this title the following words have the meanings indicated.~~

17 ~~(d) "Commission" means the State Real Estate Commission.~~

18 ~~(1) "Provide real estate brokerage services" means to engage in any of the~~
19 ~~following activities:~~

20 ~~(1) for consideration, providing any of the following services for another~~
21 ~~person:~~

22 ~~(i) selling, buying, exchanging, or leasing any real estate; or~~

23 ~~(ii) collecting rent for the use of any real estate;~~

24 ~~(2) for consideration, assisting another person to locate or obtain for~~
25 ~~purchase or lease any residential real estate;~~

26 ~~(3) engaging regularly in a business of dealing in real estate or leases or~~
27 ~~options on real estate;~~

28 ~~(4) engaging in a business the primary purpose of which is promoting the~~
29 ~~sale of real estate through a listing in a publication issued primarily for the promotion of~~
30 ~~real estate sales;~~

~~(5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or~~

~~(6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection.~~

~~(n) "Real estate broker" means an individual who provides real estate brokerage services.~~

~~17-210.~~

~~The Commission shall submit to the Secretary an annual report of the activities of the Commission that includes:~~

~~(1) a statement of the total receipts from license fees;~~

~~(2) a statement of the total expenditures of the Commission;~~

~~(3) the number of real estate broker licenses, associate real estate broker licenses, and real estate salesperson licenses issued in each county;~~

~~(4) the number of hearings held;~~

~~(5) the number of complaints received;~~

~~(6) the number of investigations made;~~

~~(7) the number of applications for licenses denied;~~

~~(8) the total number of licenses suspended or revoked;~~

~~(9) the number of cases resolved within the schedule adopted under § 17-208(b) of this subtitle;~~

~~(10) the number of Guaranty Fund awards made that reach the statutory cap at the time the award is made, the corresponding amounts claimed by the complainant in each case, and the amount of damages that would have been reimbursable to the complainant if the statutory cap did not exist; [and]~~

~~(11) AN ASSESSMENT OF THE USE OF EXCLUSIVE LISTING AGREEMENTS, AS DEFINED IN § 10-803 OF THE REAL PROPERTY ARTICLE, AND ANY DETRIMENTAL IMPACT OF THESE AGREEMENTS ON TRANSACTIONS FOR RESIDENTIAL PROPERTY; AND~~

~~[(11)] (12) any other information that reflects the work of the Commission.~~

1 **SUBTITLE 8. RESIDENTIAL PROPERTY SERVICE AGREEMENTS.**

2 **14-801.**

3 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

5 **(B) "RECORD" MEANS THE ACT OF ADDING ANY DOCUMENT OR DATA THAT**
6 **AFFECTS RESIDENTIAL PROPERTY TO STATE OR LOCAL GOVERNMENT RECORDS.**

7 **(C) (1) "RESIDENTIAL PROPERTY" MEANS REAL PROPERTY IMPROVED**
8 **BY A DWELLING UNIT THAT IS DESIGNED PRINCIPALLY AND IS INTENDED FOR**
9 **HUMAN HABITATION.**

10 **(2) "RESIDENTIAL PROPERTY" INCLUDES:**

11 **(I) A RESIDENTIAL CONDOMINIUM UNIT; AND**

12 **(II) A UNIT IN A COOPERATIVE PROJECT, AS DEFINED IN §**
13 **5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.**

14 **(D) (1) "SERVICE AGREEMENT" MEANS AN AGREEMENT WHERE A**
15 **SERVICE PROVIDER AGREES TO PROVIDE AN INDIVIDUAL SERVICES FOR:**

16 **(I) THE MAINTENANCE OF RESIDENTIAL PROPERTY THAT THE**
17 **INDIVIDUAL OWNS; OR**

18 **(II) THE PURCHASE OR SALE OF RESIDENTIAL PROPERTY.**

19 **(2) "SERVICE AGREEMENT" INCLUDES ANY MEMORANDUM, NOTICE,**
20 **AGREEMENT, OR SIMILAR DOCUMENT THAT IS USED BY A SERVICE PROVIDER TO**
21 **CAUSE A SERVICE AGREEMENT TO BE RECORDED.**

22 **(E) (1) "SERVICE PROVIDER" MEANS A PERSON THAT PROVIDES**
23 **SERVICES TO AN INDIVIDUAL THROUGH A SERVICE AGREEMENT FOR:**

24 **(I) THE MAINTENANCE OF RESIDENTIAL PROPERTY THAT THE**
25 **INDIVIDUAL OWNS; OR**

26 **(II) THE PURCHASE OR SALE OF RESIDENTIAL PROPERTY.**

27 **(2) "SERVICE PROVIDER" INCLUDES ANY PERSON ACTING AS AN**
28 **AGENT OR DESIGNEE OF A SERVICE PROVIDER.**

1 14-802.

2 (A) THIS SUBTITLE APPLIES ONLY TO A SERVICE AGREEMENT ENTERED
3 INTO ON OR AFTER JUNE 1, 2023.

4 (B) THIS SUBTITLE DOES NOT APPLY TO:

5 (1) A HOME WARRANTY OR SIMILAR PRODUCT THAT COVERS THE
6 COST OF MAINTENANCE OF A MAJOR HOME SYSTEM SUCH AS PLUMBING,
7 ELECTRICAL, OR HEATING, VENTILATING, AND AIR-CONDITIONING;

8 (2) AN INSURANCE CONTRACT;

9 (3) AN OPTION OR RIGHT OF REFUSAL TO PURCHASE RESIDENTIAL
10 PROPERTY;

11 (4) A DECLARATION CREATED IN THE FORMATION OF A COMMON
12 INTEREST COMMUNITY, AS DEFINED IN § 1-801 OF THE ENVIRONMENT ARTICLE;

13 (5) A MAINTENANCE OR REPAIR AGREEMENT ENTERED INTO BY A
14 HOMEOWNERS ASSOCIATION, AS DEFINED IN § 11B-101 OF THIS ARTICLE;

15 (6) A MORTGAGE LOAN OR A COMMITMENT TO MAKE OR RECEIVE A
16 MORTGAGE LOAN;

17 (7) AN AGREEMENT RELATING TO THE SALE OR RENTAL OF
18 PERSONAL PROPERTY;

19 (8) WATER, SEWER, ELECTRICAL, TELEPHONE, CABLE, OR OTHER
20 REGULATED UTILITY PROVIDERS; OR

21 (9) A MECHANICS LIEN, AS ESTABLISHED UNDER TITLE 9 OF THIS
22 ARTICLE.

23 14-803.

24 A SERVICE AGREEMENT, OR ANY PART OF A SERVICE AGREEMENT, MAY NOT:

25 (1) BE EFFECTIVE FOR MORE THAN 1 YEAR; OR

26 (2) (i) PURPORT TO RUN WITH THE LAND OR BIND SUBSEQUENT
27 BONA FIDE PURCHASERS;

1 (II) PURPORT TO CREATE A LIEN, ENCUMBRANCE, OR SECURITY
2 INTEREST ON THE RESIDENTIAL PROPERTY OF A PARTY TO THE SERVICE
3 AGREEMENT; OR

4 (III) ALLOW THE SERVICE PROVIDER TO ASSIGN OR TRANSFER
5 THE RIGHT TO PROVIDE SERVICES UNDER THE SERVICE AGREEMENT TO ANOTHER
6 PERSON WITHOUT NOTICE OR THE CONSENT OF A PARTY TO THE SERVICE
7 AGREEMENT.

8 14-804.

9 A SERVICE AGREEMENT THAT VIOLATES § 14-803 OF THIS SUBTITLE SHALL
10 BE VOID AND UNENFORCEABLE.

11 14-805.

12 (A) A VIOLATION OF § 14-803 OF THIS SUBTITLE BY A SERVICE PROVIDER
13 IS:

14 (1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN
15 THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

16 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
17 CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

18 (B) THIS SECTION DOES NOT PREVENT AN INDIVIDUAL FROM PURSUING
19 ANY OTHER REMEDY PROVIDED BY LAW.

20 14-806.

21 (A) A SERVICE PROVIDER MAY NOT SUBMIT A SERVICE AGREEMENT THAT IS
22 IN VIOLATION OF § 14-803 OF THIS SUBTITLE TO THE CLERK OF A CIRCUIT COURT
23 OR A STATE OR LOCAL AGENCY FOR RECORDING.

24 (B) A SERVICE PROVIDER WHO VIOLATES SUBSECTION (A) OF THIS SECTION
25 IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT
26 NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$1,000 OR BOTH.

27 14-807.

28 THE CLERK OF A CIRCUIT COURT OR A STATE OR LOCAL AGENCY MAY DENY A
29 REQUEST TO RECORD A SERVICE AGREEMENT IF IT IS DETERMINED THAT THE
30 SERVICE AGREEMENT IS IN VIOLATION OF § 14-803 OF THIS SUBTITLE.

1 14-808.

2 A RECORDED SERVICE AGREEMENT THAT IS IN VIOLATION OF § 14-803 OF
 3 THIS SUBTITLE MAY NOT PROVIDE ACTUAL OR CONSTRUCTIVE NOTICE OF A LIEN
 4 ARISING FROM THE SERVICE AGREEMENT TO A SUBSEQUENT BONA FIDE
 5 PURCHASER OF THE RESIDENTIAL PROPERTY.

6 14-809.

7 (A) IF A SERVICE AGREEMENT THAT IS IN VIOLATION OF § 14-803 OF THIS
 8 SUBTITLE IS RECORDED, ANY PERSON WITH AN INTEREST IN THE RESIDENTIAL
 9 PROPERTY THAT IS SUBJECT TO A LIEN ARISING FROM THE SERVICE AGREEMENT
 10 MAY BRING AN ACTION AGAINST THE SERVICE PROVIDER IN THE CIRCUIT COURT OF
 11 THE COUNTY WHERE THE RESIDENTIAL PROPERTY IS LOCATED TO REQUEST A
 12 DETERMINATION THAT THE SERVICE AGREEMENT IS VOID AND UNENFORCEABLE
 13 UNDER THIS SUBTITLE.

14 (B) IF A SERVICE AGREEMENT IS DETERMINED TO BE VOID AND
 15 UNENFORCEABLE UNDER SUBSECTION (A) OF THIS SECTION, THE PERSON WHO
 16 BROUGHT THE ACTION MAY SEEK:

17 (1) COMPENSATORY DAMAGES; AND

18 (2) REASONABLE ATTORNEY'S FEES AND COSTS.

19 Article – Commercial Law

20 13-301.

21 Unfair, abusive, or deceptive trade practices include any:

22 (14) Violation of a provision of:

23 (xxxv) Section 11-210 of the Education Article; [or]

24 (xxxvi) Title 14, Subtitle 44 of this article; or

25 (xxxvii) SECTION 14-805 OF THE REAL PROPERTY ARTICLE;

26 OR

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
 28 1, 2023.