

**SB579 testimony.docx.pdf**

Uploaded by: Antonio Hayes

Position: FAV

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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Hayes in Support of Senate Bill 579:  
Residential Property - Exclusive Listing Agreements - Limit on Duration**

**March 7, 2023**

Chairman Smith and members of the Judicial Proceedings Committee,

Predatory exclusive listing agreements are proliferating throughout Maryland. As Marylanders work to recover from the financial hardships of the pandemic, certain real estate brokers are taking advantage by offering relatively small amounts of cash for exclusive listing rights. Often homeowners receive only four hundred to six hundred dollars in exchange for a 40-year exclusive listing agreement. Not only is this extremely unequal, but there are high costs in order to get out of the agreement. MV Realty, a brokerage involved in this practice, charges a termination fee equal to 3% of the home value, secured by a lien on the property. These “homeowner benefit agreements” target homeowners who are desperate for cash and lack a full understanding of the decadeslong implications.

The Baltimore Banner reported in October 2022, that roughly 400 of these agreements have been recorded in city and county land records across Maryland, and likely more have been signed but not yet recorded. Under SB 579, exclusive listing agreements entered into on or after June 1, 2023, can only be effective for a period of one year by law. This will help protect Maryland homeowners from predatory schemes that take away their rights as homeowners for a disproportionate amount of compensation.

We need legislation such as SB 579 to regulate these highly pervasive agreements that are exploiting homeowners and misleading them into decadeslong commitments that could cost them a lot in the end.

For these reasons, I urge a favorable report on Senate Bill 579.

Respectfully,

A handwritten signature in blue ink, appearing to read "Antonio L. Hayes".

Senator Antonio L. Hayes  
40<sup>th</sup> Legislative District – MD

**SB0579.docx.pdf**

Uploaded by: Director Michael Higgs

Position: FAV

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**HEARING DATE:** March 7, 2023

**BILL:** SB0579

**TITLE:** Residential Property - Exclusive Listing Agreements - Limit on Duration

**SDAT POSITION:** SUPPORT

The State Department of Assessments and Taxation (SDAT) supports SB0579. This bill adds critical consumer protection by limiting Exclusive Listing Agreements to one year. While the Department recognizes the importance of reasonable Exclusive Listing Agreements, the Department is concerned with the recent cases of lengthy Exclusive Listing Agreements.

For these reasons, SDAT urges a favorable vote on SB0579.

# **SB 579\_Consumer Protection Division\_Fav w Amend\_20**

Uploaded by: Kira Wilpone-Welborn

Position: FWA

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March 6, 2023

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Kira Wilpone-Welborn, Assistant Attorney General  
Consumer Protection Division

Re: Senate Bill 579 – Residential Property – Exclusive Listing Agreements – Limit on  
Duration (SUPPORT WITH AMENDMENT)

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The Consumer Protection Division of the Office of the Attorney General (the "Division") supports with amendment Senate Bill 579 sponsored by Senator Antonio Hayes. Senate Bill 579 would limit any exclusive listing agreement entered into by a homeowner to a one-year term. Limiting the duration of an exclusive listing agreement to one year is a common-sense restriction that protects the real estate brokers and salespersons providing listing and selling services and the homeowners.

Although Senate Bill 579 proposes appropriate restrictions to the duration of an exclusive listing agreement, the Division is concerned that the definition of "residential property" used in the bill is unduly restrictive. Senate Bill 579 defines a residential property as "real property improved by four or fewer single-family dwelling units that are designed principally and are intended for human habitation." See pg. 2, lines 17-19. As drafted, the Division is concerned that homes in condominium buildings and townhome communities with more than four units may be inadvertently excluded from the important protections Senate Bill 579 seeks to provide. As such, the Division recommends that Senate Bill 579's definition of residential property be expanded to ensure that all residential property is covered by the one-year limitation for exclusive listing agreements.

The Division requests that the Judicial Proceedings Committee give Senate Bill 579 a favorable report with amendment.

Cc: The Honorable Antonio Hayes  
Members, Judicial Proceedings Committee

# **prohibition-of-unfair-service-agreements-model-act**

Uploaded by: Lisa May

Position: INFO

## **Model Act**

### **Prohibition of Unfair Service Agreements**

#### **Preamble**

This Act is intended to prohibit the use of service agreements that are unfair to an owner of residential real estate who enters into such an agreement or to persons who may become owners of that real estate in the future. The Act also prohibits the recording of such agreements so that the public records will not be clouded by them, and future owners will not be put to the burden of bringing suits to remove them from their chains of title and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

#### **Article I. Definitions**

Section 101. “Service agreement” means a contract under which a person agrees to provide services in connection with the maintenance of or purchase or sale of residential real estate.

Section 102. “Residential real estate” means real property located in this state which is used primarily for personal, family, or household purposes and is improved by one to four dwelling units.

Section 103. “Recording” means presenting a document to a [county recorder] in this State for official placement in the public land records.

Section 104. “Service provider” means an individual or entity that provides services to a person.

Section 105. “Person” means a natural person, partnership, association, cooperative, corporation, trust, or other legal entity.

#### **Article II. Unfair Service Agreements**

Section 201. **Characteristics of Unfair Service Agreements.**

- (a) A service agreement is unfair under this Act if any part of the service subject to the agreement is not to be performed within one year after the time it is entered into and has any of the following characteristics:
  - (1) The service agreement purports to run with the land or to be binding on future owners of interests in the real property; or
  - (2) The service agreement allows for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or
  - (3) The service agreement purports to create a lien, encumbrance, or other real property security interest.



(b) This Act does not apply to:

- (1) A home warranty or similar product that covers the cost of maintenance of a major home system (for example, plumbing, HVAC or electrical wiring) for a fixed period; or
- (2) An insurance contract; or
- (3) An option or right of refusal to purchase the residential real estate; or
- (4) A declaration created in the formation of a common interest community or an amendment thereto; or
- (5) A maintenance or repair agreement entered by a homeowners' association in a common interest community; or
- (6) A mortgage loan or a commitment to make or receive a mortgage loan; or
- (7) A security agreement under the UCC relating to the sale or rental of personal property or fixtures; or
- (8) Water, sewer, electrical, telephone, cable, or other regulated utility service providers.

(c) This statute does not impair the rights granted by the mechanics lien statute of this state [insert citation].

Section 202. **Unfair Service Agreements Unenforceable.** If a service agreement is unfair under this Act it is unenforceable.

Section 203. **Deceptive Act.** If a person enters into an unfair service agreement with a consumer as defined in [insert citation], that agreement shall *per se* be deemed a deceptive act under the [Unfair and Deceptive Acts and Practices] Statute of this State [insert citation].

Section 204. **Recording Prohibited.**

- (a) No person shall record or cause to be recorded an unfair service agreement or notice or memorandum thereof in this State.
- (b) [A person who records or causes to be recorded an unfair service agreement or notice or memorandum thereof of in this State shall be guilty of a Class A misdemeanor.]
- (c) [Notwithstanding the recording statute of this state, [insert citation]] a [county recorder] in this State may refuse to accept for recordation an unfair service agreement.
- (d) If an unfair service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

Section 205. **Recording of Court Order.** If an unfair service agreement or a notice or memorandum thereof is recorded in this state, any person with an interest in the real property that is the subject of that agreement may apply to a [district] court in the county where the recording exists to record a court order declaring the agreement unenforceable.

Section 206. **Rights of Recovery.** If an unfair service agreement or a notice or memorandum thereof is recorded in this state, any person with an interest in the real property that is the subject of that agreement may recover such actual damages, costs and attorney's fees as may be proven against the service provider who recorded the agreement.

**SB 579 \_Listings\_ Realtors\_INFO.pdf**

Uploaded by: Lisa May

Position: INFO



## **Senate Bill 579 – Sales of Residential Real Property – Offers to Purchase and Transfer Tax**

### **Information**

Maryland REALTORS® offers the following comments on SB 579.

It is our understanding that SB 579 is an attempt to address so-called “Homeowner Benefit Agreements” (HBAs), which have recently been offered in Maryland. These agreements provide an upfront payment to homeowners (typically \$500-\$2,000) in exchange for the exclusive right to list their properties for a term of anywhere from 25 to 40 years. These agreements are recorded in the land records of the property and involve a termination fee of 3% of the home value should the property owner choose to violate the terms of the agreement.

Several states have opened investigations into these agreements through their respective Attorneys General on the basis that these agreements have been predatory upon certain racial, ethnic, and socio-economic groups. The outcomes of those investigations are still pending.

However, as it pertains to SB 579, we believe it is necessary to share with the General Assembly that in those investigations, the companies offering HBAs have argued that these are not listing agreements. Rather, they have claimed that these are agreements to enter into a listing agreement at some point during the term of the contract. If this assertion holds, then the provisions of SB 579 would not apply to HBAs offered in Maryland.

As an alternative, we are including with our written testimony a copy of the American Land Title Association’s national model ordinance for these agreements. It is our understanding that this model language is being introduced in other states as a response to HBAs. If this approach is not favored by the General Assembly, then we would recommend that a separate definition for such agreements be outlined in the code so as not to interfere with the standard listing agreement for residential sales transactions. For instance, the General Assembly could define these as “Non-Title Recorded Agreements for Personal Services” (NTRAPS), as outlined by American Land Title, “brokerage services agreements” or another exclusive representation agreement that is separate and distinct from what the industry considers a standard “listing agreement.”

We thank you for your consideration of our comments as you review SB 579.

**For more information contact**  
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