



**PA 24-101**—sSB 201

*General Law Committee*

*Judiciary Committee*

**AN ACT CONCERNING UNFAIR REAL ESTATE LISTING AGREEMENTS AND THE CONNECTICUT UNFAIR TRADE PRACTICES ACT**

**SUMMARY:** This act 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 act 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 previously entered into certain real estate listing agreements to (1) rerecord the agreements on the land records in order for them to remain enforceable and (2) notify certain individuals and officials of any assignment of rights under these agreements. The act allows anyone to petition the court to declare an agreement void and unenforceable.

The act authorizes the Department of Consumer Protection (DCP) to investigate violations 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.

**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 act 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.

Under the act, an “unfair real estate listing agreement” is a contract entered into on or after July 1, 2024, under which a real estate listing provider (someone who provides, or agrees to provide, a real estate listing under the agreement) is not required to perform any part of the listing within one year of entering into the agreement and the agreement:

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

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3. claims to create a lien, encumbrance, or security interest in the property.

The act makes these unfair real estate listing agreements unenforceable and CUTPA violations.

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

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

### *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, the act allows any person who holds an interest in the property or the attorney general to 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 who is a 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 of the filing to the attorney general and anyone holding an interest in the property. 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 require the petitioner to certify to the court that the petitioner did so.

The act 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 void and unenforceable once it is shown that it does not comply with the act'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.

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Under the act, 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 or rerecorded 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.

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

By July 31, 2024, the act requires real estate listing providers that entered into real estate listing agreement on or before June 30, 2024, to rerecord the agreement and record a notice of it with the town clerk of the town where the residential property is located if the agreement (1) claims to run with the land or bind future holders of interest in the 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. The notice 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 property subject to the agreement;
3. the amount or method of calculating the fee, as 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 the agreement and record the notice 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.

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

The act 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, within 30 days of the assignment, to:

1. any person who holds an 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

The act authorizes the DCP commissioner to investigate violations of and

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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 act 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.

The act also allows DCP, as part of an assurance, to require the person agreeing to the assurance to pay for investigative costs. Existing law allows assurances to include restitution.

### BACKGROUND

#### *CUTPA*

By law, CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner, under specified procedures to issue regulations defining an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, imposes civil penalties of up to \$5,000, 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.