

HOUSE BILL NO. 1188

Introduced by

Representatives Louser, Boschee, Cory, Koppelman, Meier, Mock, Steiner, VanWinkle

Senators Larsen, Larson

1 A BILL for an Act to create and enact a new chapter to title 47 of the North Dakota Century
2 Code, relating to the prohibition of unfair service agreements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 47 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Recording" means the act of presenting a patent, deed, mortgage, bill of sale,
9 security agreement, judgment, decree, lien, certificate of sale, or other instrument
10 required to be filed or admitted to record, to the county recorder of the county in which
11 the property is situated, for the purposes of placing the document in the proper books
12 or other storage media as described in section 11-18-01.
- 13 2. "Residential real estate" means real property located in this state which is used
14 primarily for personal, family, or household purposes and which is improved by one to
15 four dwelling units.
- 16 3. "Service agreement" means a contract under which a person agrees to provide
17 services in connection with the maintenance, purchase, or sale of residential real
18 estate.
- 19 4. "Service provider" means a person that enters a service agreement with a person that
20 has an interest in residential real estate.

21 **Unfair service agreements - Prohibition.**

- 22 1. A service agreement is deemed unfair under this chapter if the service obligations of
23 the agreement are not to be performed within one year after the agreement is
24 executed and the agreement:

- 1 a. Purports to be a covenant running with the land as described in section 47-04-25;
- 2 b. Purports to be binding on future owners of interests in the real property;
- 3 c. Allows for assignment of the right to provide service without notice and
- 4 agreement of the owner of residential real estate; or
- 5 d. Purports to create a lien, encumbrance, or other real property security interest.
- 6 2. This chapter does not:
- 7 a. Apply to a home warranty or other type of similar product that covers the cost of
- 8 maintenance of a major housing system for a set period of time from the date a
- 9 house is sold;
- 10 b. Apply to an insurance contract;
- 11 c. Apply to an option to purchase or right of refusal;
- 12 d. Apply to a maintenance or repair agreement executed between a landowner and
- 13 a homeowners' association in a common interest community; and
- 14 e. Impair the rights and remedies provided in chapter 35-27.

15 **Actions to terminate service agreements for unfairness - Unfair agreements void and**

16 **unenforceable - Recording of court order.**

- 17 1. A person claiming to be subject to an unfair service agreement under this chapter may
- 18 bring an action to terminate the agreement in the district court of the county in which
- 19 the property is situated.
- 20 2. If a service agreement is found to be unfair under this chapter:
- 21 a. The agreement is void; and
- 22 b. A certified copy of the court order finding the service agreement void must be
- 23 filed for recording along with a copy or memorandum of the original service
- 24 agreement if the original service agreement is not of record.

25 **Actual damages - Costs and attorney's fees.**

26 The district court shall award the actual damages arising from the unfair service agreement,

27 actual attorney's fees proven against the service provider, and costs incurred by the challenging

28 party if the party with an interest in residential real estate subject to a service agreement has

29 been found to be unfair by a district court.