

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0694.01 Richard Sweetman x4333

SENATE BILL 23-077

SENATE SPONSORSHIP

Hinrichsen,

HOUSE SPONSORSHIP

Froelich,

Senate Committees
Local Government & Housing

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING THE INCLUSION OF CERTAIN TERMS IN A**
102 **BROKER ENGAGEMENT CONTRACT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill states that, with certain exceptions, a broker engagement contract for the sale of a residential premises must not:

- Purport to be a covenant running with the land or to be binding on future owners of interests in the real property;
- Allow for assignment of the right to provide service without notice and agreement of the owner of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

SENATE
Amended 2nd Reading
February 21, 2023

- residential premises; or
- Purport to create a recordable lien, encumbrance, or other real property security interest. Any such lien, encumbrance, or other real property security interest is void and unenforceable.

The bill defines a "broker engagement contract" as a written contract in which a seller, buyer, landlord, or tenant of a residential premises becomes the client of a broker and promises to pay the broker a valuable consideration or agrees that the broker may receive a valuable consideration from another person in exchange for the broker producing a seller, buyer, tenant, or landlord ready, able, and willing to sell, buy, or rent the residential premises or for performing other services.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 12-10-403.5 as
3 follows:

4 **12-10-403.5. Broker engagement contracts - residential**
5 **premises - prohibited terms - definition.** (1) AS USED IN THIS SECTION,
6 UNLESS THE CONTEXT OTHERWISE REQUIRES, "BROKERAGE ENGAGEMENT
7 CONTRACT" MEANS A WRITTEN CONTRACT IN WHICH A SELLER, BUYER,
8 LANDLORD, OR TENANT OF A RESIDENTIAL PREMISES BECOMES THE CLIENT
9 OF A BROKER OR AGREES TO RETAIN THE SERVICES OF A BROKER IN THE
10 FUTURE AND PROMISES TO PAY THE BROKER A VALUABLE CONSIDERATION
11 OR AGREES THAT THE BROKER MAY RECEIVE A VALUABLE CONSIDERATION
12 FROM ANOTHER PERSON IN EXCHANGE FOR THE BROKER:

13 (a) PRODUCING A SELLER, BUYER, TENANT, OR LANDLORD READY,
14 ABLE, AND WILLING TO SELL, BUY, OR RENT THE RESIDENTIAL PREMISES;
15 OR

16 (b) PERFORMING OTHER SERVICES.

17 (2) A BROKER ENGAGEMENT CONTRACT MUST NOT:

18 (a) PURPORT TO BE A COVENANT RUNNING WITH THE LAND OR TO
19 BE BINDING ON FUTURE OWNERS OF INTERESTS IN THE REAL PROPERTY;

1 (b) ALLOW FOR ASSIGNMENT OF THE RIGHT TO PROVIDE SERVICE
2 WITHOUT NOTICE AND AGREEMENT OF THE OWNER OF THE RESIDENTIAL
3 PREMISES; OR

4 (c) PURPORT TO CREATE A RECORDABLE LIEN, ENCUMBRANCE, OR
5 OTHER REAL PROPERTY SECURITY INTEREST. ANY SUCH LIEN,
6 ENCUMBRANCE, OR OTHER REAL PROPERTY SECURITY INTEREST IS VOID
7 AND UNENFORCEABLE.

8 (3) A PERSON WHO OFFERS TO A CONSUMER A BROKER
9 ENGAGEMENT CONTRACT THAT INCLUDES A PROVISION IN VIOLATION OF
10 SUBSECTION (2) OF THIS SECTION COMMITS AN UNFAIR OR DECEPTIVE
11 TRADE PRACTICE, AS PROVIDED IN SECTION 6-1-105 (1)(uuu).

12 (4) THIS SECTION DOES NOT APPLY TO:

13 (a) A HOME WARRANTY SERVICE CONTRACT, AS DEFINED IN
14 SECTION 12-10-901 (2)(a);

15 (b) A BUILDING WARRANTY OR SIMILAR PRODUCT THAT COVERS
16 THE COST OF MAINTENANCE OF A MAJOR HOUSING OR BUILDING SYSTEM,
17 SUCH AS A PLUMBING OR AN ELECTRICAL SYSTEM, FOR A SPECIFIC PERIOD
18 OF TIME AFTER THE DATE ON WHICH A HOUSE OR BUILDING IS SOLD;

19 (c) AN INSURANCE CONTRACT;

20 (d) AN OPTION TO PURCHASE, A PUT REQUIREMENT TO PURCHASE,
21 A RIGHT OF FIRST OFFER, OR A RIGHT OF REFUSAL;

22 (e) A DECLARATION CREATED IN THE FORMATION OF A COMMON
23 INTEREST COMMUNITY, AS DEFINED IN SECTION 38-33.3-103 (8), OR AN
24 AMENDMENT TO THE DECLARATION;

25 (f) A MAINTENANCE OR REPAIR AGREEMENT ENTERED INTO BY A
26 UNIT OWNERS' ASSOCIATION, AS DEFINED IN SECTION 38-33.3-103 (3);

27 (g) A LOAN OR A COMMITMENT TO MAKE OR RECEIVE A LOAN,

1 WHICH LOAN OR COMMITMENT IS SECURED BY REAL ESTATE;

2 (h) A SECURITY AGREEMENT UNDER THE "UNIFORM COMMERCIAL
3 CODE" RELATING TO THE SALE OR RENTAL OF PERSONAL PROPERTY OR
4 FIXTURES;

5 (i) WATER, SEWER, ELECTRICAL, TELEPHONE, CABLE, OR OTHER
6 REGULATED UTILITY SERVICE PROVIDERS; OR

7 (j) A PROPERTY MANAGEMENT AGREEMENT BY WHICH THE OWNER
8 OF REAL PROPERTY CONTRACTS WITH A PARTY TO PROVIDE MANAGEMENT
9 SERVICES FOR THE MAINTENANCE, OWNERSHIP, OPERATION, OR LEASE OF
10 A RESIDENTIAL PREMISES.

11 **SECTION 2. In Colorado Revised Statutes, 6-1-105, add**
12 **(1)(uuu) as follows:**

13 **6-1-105. Unfair or deceptive trade practices. (1) A person**
14 **engages in a deceptive trade practice when, in the course of the person's**
15 **business, vocation, or occupation, the person:**

16 **(uuu) VIOLATES SECTION 12-10-403.5.**

17 **SECTION 3. Act subject to petition - effective date -**
18 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
19 the expiration of the ninety-day period after final adjournment of the
20 general assembly; except that, if a referendum petition is filed pursuant
21 to section 1 (3) of article V of the state constitution against this act or an
22 item, section, or part of this act within such period, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2024 and, in such case, will take
25 effect on the date of the official declaration of the vote thereon by the
26 governor.

- 1 (2) This act applies to broker engagement contracts executed or
- 2 renewed on or after the applicable effective date of this act.