

CHAPTER 50

PROFESSIONS AND OCCUPATIONS

SENATE BILL 23-077

BY SENATOR(S) Hinrichsen, Gonzales;
also REPRESENTATIVE(S) Froelich and Taggart, Boesenecker, Dickson, Hamrick, Jodeh, Lindsay, Lindstedt, Mauro, Ricks,
Woodrow.

AN ACT**CONCERNING PROHIBITING THE INCLUSION OF CERTAIN TERMS IN A BROKER ENGAGEMENT CONTRACT.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** In Colorado Revised Statutes, **add** 12-10-403.5 as follows:

12-10-403.5. Broker engagement contracts - residential premises - prohibited terms - definition. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "BROKERAGE ENGAGEMENT CONTRACT" MEANS A WRITTEN CONTRACT IN WHICH A SELLER, BUYER, LANDLORD, OR TENANT OF A RESIDENTIAL PREMISES BECOMES THE CLIENT OF A BROKER OR AGREES TO RETAIN THE SERVICES OF A BROKER IN THE FUTURE 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:

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

(b) PERFORMING OTHER SERVICES.

(2) A BROKER ENGAGEMENT CONTRACT MUST NOT:

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) 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.

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

(4) THIS SECTION DOES NOT APPLY TO:

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

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

(c) AN INSURANCE CONTRACT;

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

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

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

(g) A LOAN OR A COMMITMENT TO MAKE OR RECEIVE A LOAN, WHICH LOAN OR COMMITMENT IS SECURED BY REAL ESTATE;

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

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

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

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

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

(uuu) VIOLATES SECTION 12-10-403.5.

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

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

Approved: April 3, 2023