

Amendment to SB 164-FN

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT relative to homeowners and prohibiting certain types of listing agreements.

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5 Amend the bill by replacing section 1 with the following:

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7 1 New Sections; Service Agreements in Residential Real Estate Transactions. Amend RSA 356-  
8 A by inserting after section 16 the following new sections:

9 356-A:16-a Unfair Agreements to List Residential Real Estate.

10 I. Definitions. In this section:

11 (a) "Prohibited listing agreement" means a contract or agreement between a provider  
12 and an owner under which the owner agrees to list the owner's residential real estate for sale and  
13 that contains any of the terms or requirements set forth in paragraph II.

14 (b) "Owner" means an owner of an interest in residential real estate.

15 (c) "Provider" means a person or entity providing or offering to provide real estate  
16 brokerage services.

17 (d) "Recording" means presenting a document to a register of deeds for official placement  
18 in the records of the registry of deeds.

19 (e) "Residential real estate" means real estate consisting of not less than one nor more  
20 than 4 residential dwelling units.

21 II. A provider shall not enter into, or offer to enter into, a prohibited listing agreement that  
22 purports to:

23 (a) Bind any future owner not a party to the agreement;

24 (b) Allow for the assignment by the provider of a real estate brokerage service to a third  
25 party without notice to or consent of the owner;

26 (c) Create a lien, encumbrance or other real property security interest; or

27 (d) Obligate the owner to pay a fee or commission to the provider upon a sale or transfer  
28 of the residential real estate when the sale or transfer is not the result of a real estate brokerage  
29 service provided by the provider.

30 III. A violation of this section constitutes an unfair or deceptive act or practice under RSA  
31 358-A.

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1           IV. A prohibited listing agreement in violation of this section is unenforceable. A person  
2 may not record or cause to be recorded a prohibited listing agreement in violation of this section. A  
3 prohibited listing agreement recorded in this state in violation of this section does not provide actual  
4 or constructive notice against an otherwise bona fide purchaser or creditor. If a prohibited listing  
5 agreement is recorded in violation of this section, a party with an interest in the residential real  
6 estate that is the subject of that prohibited listing agreement may apply to the superior court in the  
7 county where the recording occurred for an order declaring the prohibited listing agreement void and  
8 of no effect.

9           V. Nothing in this section affects a lien on residential real estate established under RSA  
10 447:2.

11           356-A:16-b Rights of Recovery. If a prohibited listing agreement is recorded in violation of RSA  
12 356-A:16-a, a party with an interest in the residential real estate that is the subject of the prohibited  
13 listing agreement may recover actual damages, costs, and attorney's fees as may be proven against  
14 the party who recorded the prohibited listing agreement.

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AMENDED ANALYSIS

This bill prohibits certain contracts or agreements between a provider and an owner under which the owner agrees to list the owner's residential real estate for sale with the provider which requires a lien.