

House Bill 471

By: Representatives Crowe of the 118th, Powell of the 33rd, Washburn of the 144th, Roberts of the 52nd, Reeves of the 99th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, so as to add an example of an unfair or deceptive practice regarding brokerage
3 engagements and options to enter into brokerage engagements to the "Fair Business Practices
4 Act"; to provide for requirements and restrictions on certain unsolicited written inquiries or
5 mailings expressing an interest in buying real property; to revise provisions regarding the
6 duration of relationships between brokers and clients; to provide for limitations on brokerage
7 engagements and options to enter into brokerage engagements; to provide for construction;
8 to provide for definitions; to amend Code Section 46-5-27 of the Official Code of Georgia
9 Annotated, relating to telephone solicitations to residential, mobile, or wireless subscribers,
10 Public Service Commission to establish and maintain list of certain subscribers, authorization
11 for imposition of administrative fees, confidential nature of data base, and required
12 identification, so as to revise a definition; to provide for related matters; to repeal conflicting
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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15 **SECTION 1.**

16 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
17 amended in Part 2 of Article 15 of Chapter 1, relating to the "Fair Business Practices Act of
18 1975," by striking "and" at the end of paragraph (33), striking the period at the end of
19 paragraph (34) and inserting "; and" in lieu thereof, and by adding a new paragraph to
20 subsection (b) of Code Section 10-1-393, relating to unfair or deceptive practices in
21 consumer transactions unlawful and examples, to read as follows:

22 "(35) Failure to comply with the provisions of Code Section 10-6A-9 or 10-6A-10
23 regarding brokerage engagements and options to enter into brokerage engagements."

24 **SECTION 2.**

25 Said title is further amended in said part by adding a new Code section to read as follows:

26 "10-1-393.18.

27 (a) Any unsolicited written inquiry or mailing by any person or entity that is not licensed
28 or regulated pursuant to the provisions of Chapter 40 or Chapter 41 of Title 43 or
29 Chapter 19 of Title 15 that expresses an interest in buying real property, or an option to buy
30 real property, from the addressee or in buying the real property to which such written
31 inquiry or mailing is addressed or that offers services relating to the sale of real estate shall
32 include:

33 (1)(A) At the top of and at least two inches apart from any other text on such written
34 inquiry or mailing, the following notice in capital letters:

35 'THIS IS A SOLICITATION. THE SENDER IS CONTACTING YOU TO
36 INQUIRE AS TO YOUR INTEREST IN SELLING YOUR HOME OR OTHER
37 REAL ESTATE. YOU ARE UNDER NO OBLIGATION TO RESPOND.'

38 (B) No text contained in such solicitation shall be larger than the text required in
39 subparagraph (A) of this paragraph.

40 (2) On front of the envelope or, if there is no envelope, on the part of the written inquiry
41 or mailing that bears the postage stamp or postage amount, the following notice in capital
42 letters:

43 'SOLICITATION. YOU ARE UNDER NO OBLIGATION TO OPEN OR TO
44 RESPOND.'

45 (3) The notices required in paragraphs (1) and (2) of this subsection shall be:

46 (A) Of a font that is the same as the majority of the text of the written inquiry or
47 mailing;

48 (B) Of a size which is no smaller than the text of the written inquiry or mailing, and in
49 no event no smaller than 16 point font; and

50 (C) Displayed in a distinctly contrasting color.

51 (b) Failure to comply with the provisions of this Code section shall be considered an unfair
52 or deceptive act or practice which is unlawful and shall therefore be punishable by the
53 provisions of this part; provided, however, that notwithstanding Code Section 10-1-399,
54 a claim of a violation of this Code section may be brought in a representative capacity and
55 may be the subject of a class action under Code Section 9-11-23; and provided, further, that
56 damages for such violation shall be the actual damages or \$200.00 per violation, whichever
57 is greater."

58 **SECTION 3.**

59 Said title is further amended by adding a new paragraph to Code Section 10-6A-3, relating
60 to definitions relative to brokerage relationships in real estate transactions, to read as follows:

61 "(12.1) 'Option to enter into a brokerage engagement' means a written contract wherein
62 a broker pays valuable consideration or agrees that a seller, buyer, landlord, or tenant may
63 receive a valuable consideration from another in consideration of such seller, buyer,
64 landlord, or tenant granting such broker an exclusive right to enter into a brokerage

65 engagement with such seller, buyer, landlord, or tenant during the term of the written
66 contract."

67 **SECTION 4.**

68 Said title is further amended by revising subsection (a) of Code Section 10-6A-9, relating to
69 duration of relationships between brokers and clients, as follows:

70 "(a) The relationships set forth in Code Sections 10-6A-4 through 10-6A-8 ~~and~~, Code
71 ~~Sections~~ Section 10-6A-12 and, Code Section 10-6A-13, and an option to enter into a
72 brokerage engagement shall commence at the time that the client engages the broker or
73 executes an option to enter into a brokerage engagement, and shall continue until:

74 (1) Completion of performance of the engagement; or

75 (2) If paragraph (1) of this subsection is not applicable, then the earlier of:

76 (A) Any date of expiration agreed upon by the parties in the brokerage engagement,
77 the option to enter into a brokerage engagement, or in any amendments thereto;

78 (B) Any authorized termination of the relationship; or

79 (C) If no expiration is provided and no authorized termination has occurred, then one
80 year after initiation of the brokerage engagement or one year after the date the option
81 to enter into a brokerage engagement was executed."

82 **SECTION 5.**

83 Said title is further amended by revising Code Section 10-6A-10, relating to duties of brokers
84 prior to entering into brokerage engagement relationships, as follows:

85 "10-6A-10.

86 (a) All brokerage engagements must:

87 (1) Advise the prospective client of the types of agency relationships available through
88 the broker;

- 89 (2) Advise such prospective client of any brokerage relationships held by such broker
90 with other parties which would conflict with any interests of the prospective client
91 actually known to the broker but excluding the fact that the broker may be representing
92 other sellers and landlords in selling or leasing property or that the broker may be
93 representing other buyers and tenants in buying or leasing other property;
- 94 (3) Advise such prospective client as to the broker's compensation and whether the
95 broker will share such compensation with other brokers who may represent other parties
96 to the transaction in an agency capacity; and
- 97 (4) Advise the prospective client of the broker's obligations to keep information
98 confidential under this chapter.
- 99 (b) A brokerage engagement or an option to enter into a brokerage engagement shall not:
- 100 (1) Purport to be a covenant running with the land or to be binding on future owners of
101 interests in the subject property, except for rights solely applicable to commercial real
102 estate as set forth in Code Section 44-14-602;
- 103 (2) Allow for assignment of the right to provide service without notice and agreement
104 of the owner of the subject property, except for such rights of assignment for commercial
105 real estate as set forth in Code Section 44-14-602; or
- 106 (3) Purport to create a recordable lien, encumbrance, or other real property security
107 interest. Any such lien, encumbrance, or other real property security interest, if recorded,
108 shall be void and unenforceable and no release or voiding of such lien, encumbrance, or
109 other real property security interest shall be required; provided, however, that this
110 subsection shall not be applicable to lien rights solely applicable to commercial real estate
111 as set forth in Code Section 44-14-602.
- 112 (c) This Code section shall not apply to:
- 113 (1) A home warranty, building warranty, or other similar product that covers the cost of
114 maintenance of a home's or other building's system or systems for a prescribed period of
115 time from the date such home or building is sold;

- 116 (2) An insurance contract;
117 (3) An option to purchase, a put requirement to purchase, a right of first offer, or a right
118 of refusal;
119 (4) A declaration created in the formation of a common interest community or an
120 amendment thereto;
121 (5) A maintenance or repair agreement entered into by a homeowners' or property
122 owners' association in a common interest community;
123 (6) A loan or a commitment to make or receive a loan secured by real estate;
124 (7) A security agreement under the Uniform Commercial Code relating to the sale or
125 rental of personal property or fixtures;
126 (8) Water, sewer, electrical, telephone, cable, or other regulated utility service providers;
127 or
128 (9) A property management agreement by which the owner of the real property shall
129 contract with a party to provide management services for the maintenance, ownership,
130 operation, or lease of real property, provided that the real estate that is the subject of the
131 property management agreement is either for commercial real estate as defined by Code
132 Section 44-14-601 or is for residential one-to-four family real estate that is otherwise not
133 occupied by the owner or owner's family members as their principal place of residence
134 and place of abode as of the date of inception of such property management agreement.
135 (d) This Code section shall not be construed to impair the rights granted by Code
136 Sections 44-14-361, 44-14-361.1, 44-14-602, and 9-12-80.
137 (e) This Code section shall not be construed to create any statutory lien right or statutory
138 right to create a cloud on title that is not otherwise created elsewhere in the Official Code
139 of Georgia Annotated."

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SECTION 6.

141 Code Section 46-5-27 of the Official Code of Georgia Annotated, relating to telephone
142 solicitations to residential, mobile, or wireless subscribers, Public Service Commission to
143 establish and maintain list of certain subscribers, authorization for imposition of
144 administrative fees, confidential nature of data base, and required identification, is amended
145 by revising paragraph (3) of subsection (b) as follows:

146 "(3) 'Telephone solicitation' means any voice communication over a telephone line for
147 the purpose of encouraging the purchase or rental of, or investment in, personal property,
148 real property, goods, or services, but does not include communications:

149 (A) To any residential, mobile, or wireless subscriber with that subscriber's prior
150 express invitation or permission;

151 (B) By or on behalf of any person or entity with whom a residential, mobile, or
152 wireless subscriber has a prior or current business or personal relationship; or

153 (C) By or on behalf of a charitable organization which has filed a registration statement
154 pursuant to Code Section 43-17-5, is exempt from such registration under
155 paragraphs (1) through (6) of subsection (a) of Code Section 43-17-9, or is exempt from
156 such registration as a religious organization or agency referred to in paragraph (2) of
157 Code Section 43-17-2; or

158 (D) By any person who is licensed or regulated pursuant to Chapter 40 or Chapter 41
159 of Title 43 or Chapter 19 of Title 15.

160 Such communication may be from a live operator, through the use of ADAD equipment
161 as defined in Code Section 46-5-23, or by other means."

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SECTION 7.

163 All laws and parts of laws in conflict with this Act are repealed.