

367.354 Residential real property service agreements -- Prohibitions -- Applicability -- Enforcement and penalties -- Administrative regulations.

- (1) As used in this section:
 - (a) "Residential real property" means real property located in this state that is:
 1. Used primarily for personal, family, or household purposes; and
 2. Improved by one (1) to four (4) dwelling units;
 - (b) "Service agreement" means an agreement under which an owner of residential real property is required, in connection with the purchase or sale of the property, to:
 1. Pay a real estate sales commission to a specified service provider;
 2. Use a specified service provider to list the property for sale; or
 3. Receive other real estate brokerage services from a specified service provider; and
 - (c) "Service provider" means a person, as defined in KRS 367.110, that:
 1. Is entitled to a real estate sales commission or other payment for real estate brokerage services under a service agreement; or
 2. Is required or entitled to:
 - a. List residential real property for sale under a service agreement; or
 - b. Otherwise provide real estate brokerage services under a service agreement.
- (2) A service agreement shall not:
 - (a) Provide for performance under the agreement, or contain any rights or obligations that may be exercised or performed, more than two (2) years after the date the agreement becomes effective, except this paragraph shall not bar enforcement of an otherwise valid agreement in accordance with KRS 413.160 or another applicable statute of limitations;
 - (b) Except as otherwise provided under KRS 376.075 and 426.720:
 1. Be binding on future owners of interests in the residential real property or otherwise purport to run with the land;
 2. Create or impose a lien, encumbrance, or other real property interest on the residential real property; or
 3. Require or permit recording of the agreement or any notice or memorandum of the agreement;
 - (c) To the extent permitted under federal law, restrict the resolution of any disputes, claims, or controversies to binding arbitration or any other form of binding alternative dispute resolution;
 - (d) Include a waiver by the residential real property owner or owners of any rights to class action relief; or
 - (e) Allow for assignment of the service provider's rights under, or interest in, the agreement without notice to, and written agreement of, the residential real property owner or owners.

- (3) (a) Any provision of a service agreement or a notice or memorandum of a service agreement, whether or not recorded, that violates subsection (2) of this section shall:
1. Be void and unenforceable; and
 2. Not bind title to residential real property or run with the land.
- (b) This subsection shall be:
1. Retroactively applied to service agreements, and notices or memorandums of service agreements, entered or recorded prior to April 4, 2024; and
 2. Prospectively applied to service agreements, and notices or memorandums of service agreements, entered or recorded on or after April 4, 2024.
- (4) (a) A service provider shall not, on or after April 4, 2024, record, or cause to be recorded, a service agreement or a notice or memorandum of a service agreement, except as otherwise provided in KRS 376.075 and 426.720.
- (b) 1. Any service provider who violates this subsection shall be guilty of a Class B misdemeanor, unless the conduct prohibited by this subsection constitutes another crime that provides for greater punishment.
2. This paragraph may be enforced by the Attorney General or any Commonwealth's attorney or county attorney of appropriate jurisdiction.
- (c) Any person with an interest in residential real property that is subject to a service agreement, or a notice or memorandum of a service agreement, recorded in violation of this subsection may institute an action against the service provider in any court of competent jurisdiction to recover:
1. Actual damages arising from the recording; and
 2. Attorney fees and costs incurred in the action.
- (5) (a) A violation of this section on or after April 4, 2024, shall be deemed to be an unfair, false, misleading, or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.
- (b) All of the remedies, powers, and duties provided to the Attorney General or any other person under KRS 367.110 to 367.300, and the penalties provided in KRS 367.990, pertaining to acts and practices declared unlawful by KRS 367.170, shall apply with equal force and effect to a violation of this section.
- (6) (a) The remedies and penalties prescribed in this section shall be cumulative.
- (b) Nothing in this section shall be construed to limit or restrict the powers, duties, remedies, or penalties available to the Attorney General, the Commonwealth, or any other person under any other statutory or common law.
- (7) The Attorney General may promulgate administrative regulations in accordance with KRS Chapter 13A necessary to effectuate, or as an aid to the effectuation of, the proper enforcement of this section.

Effective: April 4, 2024

History: Created 2024 Ky. Acts ch. 76, sec. 3, effective April 4, 2024.