

Senate Engrossed

exclusive agreements; residential property sales

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SENATE BILL 1218

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 5; RELATING
TO PROPERTY CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 5, to read:

4 CHAPTER 5

5 EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENTS

6 ARTICLE 1. GENERAL PROVISIONS

7 44-501. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT" MEANS A CONTRACT OR
10 AGREEMENT THAT PROVIDES AN EXCLUSIVE RIGHT TO A PERSON TO LIST OR SELL
11 RESIDENTIAL REAL ESTATE, INCLUDING A CONTRACT OR AGREEMENT TO ENTER INTO
12 ANY LISTING AGREEMENT OR ARRANGEMENT IN THE FUTURE OR ANY MEMORANDUM
13 RECOGNIZING THE EXISTENCE OF AN EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT.

14 2. "RESIDENTIAL REAL ESTATE" MEANS REAL PROPERTY LOCATED IN THIS
15 STATE THAT IS USED OR WILL BE USED PRIMARILY FOR A PERSONAL, FAMILY OR
16 HOUSEHOLD PURPOSE AND THAT CONTAINS FEWER THAN FIVE DWELLING UNITS.

17 44-502. Unlawful practices; listing services timeline; void
18 agreement

19 A. IT IS UNLAWFUL FOR AN EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT
20 TO:

21 1. LAST LONGER THAN TWELVE MONTHS AFTER THE DATE THAT THE AGREEMENT
22 IS EXECUTED BY THE PARTIES.

23 2. BE A COVENANT THAT RUNS WITH THE LAND.

24 3. BIND A FUTURE OWNER OF AN INTEREST IN THE RESIDENTIAL REAL
25 ESTATE THAT IS THE SUBJECT OF THE EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT
26 UNLESS THE FUTURE OWNER ACQUIRES AN INTEREST IN THE RESIDENTIAL REAL
27 ESTATE AFTER LISTING SERVICES HAVE BEGUN AND A BROKER AS DEFINED IN
28 SECTION 32-2101 HAS A READY, WILLING AND ABLE PURCHASER FOR THE
29 RESIDENTIAL REAL ESTATE.

30 4. BE RECORDED IN THE OFFICE OF A COUNTY RECORDER.

31 5. AUTHORIZE A PERSON TO PLACE A SECURITY INTEREST OR LIEN AGAINST
32 OR OTHERWISE ENCUMBER ANY RESIDENTIAL REAL ESTATE OR TO CONSTITUTE A LIEN,
33 AN ENCUMBRANCE OR A SECURITY INTEREST IN THE RESIDENTIAL REAL ESTATE.

34 6. ALLOW FOR THE ASSIGNMENT OF THE EXCLUSIVE PROPERTY ENGAGEMENT
35 AGREEMENT OR THE OBLIGATION TO PROVIDE THE UNDERLYING SERVICES WITHOUT
36 NOTICE TO, AND AGREEMENT BY, THE OWNER OF THE RESIDENTIAL REAL ESTATE THAT
37 IS THE SUBJECT OF THE EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT.

38 7. FAIL TO MEET THE REQUIREMENTS PRESCRIBED IN SECTION 32-2151.02.

39 B. AN EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT IS VOID IF THE
40 LISTING SERVICES DO NOT BEGIN WITHIN ONE YEAR AFTER THE EXECUTION OF THE
41 EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT BY THE PARTIES.

42 44-503. Enforcement; recording prohibited; liability

43 A. A COURT MAY NOT ENFORCE AN EXCLUSIVE PROPERTY ENGAGEMENT
44 AGREEMENT MADE OR RECORDED IN VIOLATION OF THIS CHAPTER AND MAY NOT IMPOSE
45 A CONSTRUCTIVE TRUST IN THE RESIDENTIAL REAL ESTATE THAT IS THE SUBJECT OF

1 THE EXCLUSIVE PROPERTY ENGAGEMENT AGREEMENT OR ON THE PROCEEDS OF THE
2 DISPOSITION OF A RELATED RESIDENTIAL REAL ESTATE TRANSACTION.

3 B. A CONTRACT OR AGREEMENT MADE OR RECORDED WITH A COUNTY
4 RECORDER'S OFFICE IN VIOLATION OF THIS CHAPTER IS VOID AND UNENFORCEABLE.

5 C. ANY CONSIDERATION THAT WAS PAID TO A HOMEOWNER RELATING TO A
6 CONTRACT OR AGREEMENT THAT VIOLATES THIS CHAPTER MUST BE FORFEITED.

7 D. A CONTRACT OR AGREEMENT THAT VIOLATES THIS CHAPTER AND THAT IS
8 RECORDED BEFORE THE EFFECTIVE DATE OF THIS SECTION IS VOID. THE STATE
9 REAL ESTATE COMMISSIONER SHALL EXECUTE AND RECORD IN THE OFFICE OF THE
10 COUNTY RECORDER IN EACH COUNTY IN THIS STATE A DOCUMENT THAT DISCLAIMS THE
11 VALIDITY AND ENFORCEABILITY OF THE CONTRACT OR AGREEMENT OR ANY RELATED
12 LIENS OR ASSIGNMENTS THAT VIOLATE THIS CHAPTER. THE STATE REAL ESTATE
13 DEPARTMENT SHALL DISPLAY ON ITS WEBSITE THE DOCUMENTS THAT THE STATE REAL
14 ESTATE COMMISSIONER HAS EXECUTED AND RECORDED PURSUANT TO THIS SUBSECTION.

15 E. AN ACT OR PRACTICE IN VIOLATION OF THIS CHAPTER IS AN UNLAWFUL
16 PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO ENFORCEMENT THROUGH
17 PRIVATE ACTION AND BY THE ATTORNEY GENERAL. ANY PERSON WHO VIOLATES THIS
18 CHAPTER IS ALSO SUBJECT TO LIABILITY AND PENALTIES UNDER SECTION 33-420.
19 THE REMEDIES PROVIDED IN THIS SECTION ARE NOT THE EXCLUSIVE REMEDIES FOR A
20 VIOLATION OF THIS CHAPTER.

21 Sec. 2. Legislative findings; intent

22 The legislature finds that:

23 1. An exclusive property engagement agreement that does not comply
24 with section 44-502, Arizona Revised Statutes, as added by this act, is
25 unfair and deceptive to an owner of residential real estate who enters
26 into the agreement and to a person who may become an owner of the real
27 estate in the future. The legislature intends to prohibit the use of an
28 exclusive property engagement agreement that does not comply with section
29 44-502, Arizona Revised Statutes, as added by this act.

30 2. The recording of an exclusive property engagement agreement that
31 does not comply with section 44-502, Arizona Revised Statutes, as added by
32 this act, can cloud the title to real property and public records. The
33 legislature intends to prohibit the recording of an exclusive property
34 engagement agreement that does not comply with section 44-502, Arizona
35 Revised Statutes, as added by this act.

36 Sec. 3. Severability

37 If a provision of this act or its application to any person or
38 circumstance is held invalid, the invalidity does not affect other
39 provisions or applications of the act that can be given effect without the
40 invalid provision or application, and to this end the provisions of this
41 act are severable.