



Episode 24: No More 40-Year Listings

Call from the Agent: My prospective seller/listing says he signed a 40-year listing agreement with another agent – can that possibly be correct and can I list the property?

The Response: The 40-year agreement your client signed is unlawful, void and of no effect. Therefore, you may list the property. Now for the explanation: Your client signed something called a “Homeowner Benefit Agreement” with the other agency (hereinafter “Bad Broker”), which provides as follows:

- Bad Broker is the exclusive listing agent for a period of 40 years;
- The agreement will run with the land (meaning it will remain intact even if the property changes hands); and
- A document will be recorded at the courthouse in order to create a lien on the property.

Per the terms of the Homeowner Benefit Agreement, a document called a “Memorandum of Agreement Affecting Real Property” was then recorded at the courthouse. This, of course, created a lien and prevented the property from being sold without Bad Broker being paid. Until recently, agents in your position would not and could not get the listing because the client was already represented.

In May 2024, the State of South Carolina, largely fueled by the efforts of the South Carolina Real Estate Commission, passed a series of statutes relating to real estate practices. New sections of Title 27 and Title 40 completely do away with agreements such as the one described above – they are based in the morality of consumer protection for SC citizens and I am pleased to present them here:

I. SC Code - Title 27

“Unfair real estate service agreements” are now void. Specifically, the statute provides as follows: A real estate service agreement is unfair, void, and in violation of this chapter if the agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

A real estate service agreement is unfair, void, and in violation of this chapter if the agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

- (1) run with the land or bind future owners of residential real estate identified in the real estate service agreement;*
- (2) allow for the assignment of the right to provide services without notice or consent of the owner or buyer; or*
- (3) create a lien, encumbrance, or other real property security interest. SC Code §27-28-30(A)*

Where there is an agreement such as this, all of the following apply:

- (1) The recording shall not operate as a lien, encumbrance, or security interest.*
- (2) No owner or buyer shall be required to record any document voiding the recording.*
- (3) The recording shall not provide actual or constructive notice to any person interested in the residential real estate that is identified in the unfair real estate service agreement. SC Code §27-28-40(B)*

In addition to being void, unfair real estate service agreements are deemed to constitute an unfair trade practice. Therefore, a property owner can recover damages from the service provider (Bad Broker) under the South Carolina Unfair Trade Practices Act, but this presumably only applies to agreements signed after May 2024. See SC Code §27-28-50

The foregoing applies to all unfair real estate service agreements, including those recorded before these statutes became law.

II. SC Code – Title 40

The South Carolina Code now provides as follows:

An agreement regarding residential real estate that is to be in effect for greater than one year and either expressly or impliedly purports to do any of the following is unenforceable and is considered to be done in bad faith, and a license involved in such an agreement is subject to disciplinary action by the commission:

- (a) The agreement runs with the land or binds future owners or heirs of the residential real estate;*
- (b) The agreement allows for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or*
- (c) The agreement creates a lien, encumbrance, or other real property security interest, or is otherwise recorded. SC Code §40-57-135(I)(9)*

Conclusion:

In current transactions, the title search will still reveal these recorded agreements, but they are no longer an issue. Though the agreements will remain on file at the courthouse, they are completely unenforceable, do not need to be “released” or “cancelled” of record, and do not affect the marketability or insurability of title.

With the agreement being unenforceable, Bad Broker is not the listing agent, so the property owner may list the property with you and, when it sells, Bad Broker is not entitled to a commission or compensation of any kind.