

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 20
PROHIBITION OF UNFAIR SERVICE AGREEMENTS ACT

48-2001. SHORT TITLE. This chapter shall be known and may be cited as the "Prohibition of Unfair Service Agreements Act."

[48-2001, added 2023, ch. 242, sec. 1, p. 741.]

48-2002. DEFINITIONS. As used in this chapter:

(1) "County recorder" means a county's clerk of the district court, elected or appointed pursuant to article V of the constitution of the state of Idaho, who serves as ex officio recorder under article XVIII of the constitution of the state of Idaho or any other individual officially designated to serve in said capacity.

(2) "Person" means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, business entities, and any other legal entity or any other group associated in fact although not a legal entity or any agent, assignee, heir, employee, representative, or servant thereof.

(3) "Record" or "recording" means placement of a document or instrument in the official county public land records.

(4) "Residential real property" means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one (1) to four (4) dwelling units.

(5) "Service agreement" means a contract under which a person agrees to provide services in connection with the maintenance of or purchase or sale of residential real property.

(6) "Service provider" means an individual or entity that provides services to a person.

[48-2002, added 2023, ch. 242, sec. 1, p. 741.]

48-2003. CHARACTERISTICS OF UNFAIR SERVICE AGREEMENTS. (1) A service agreement is unfair pursuant to this chapter if any part of the agreement provides an exclusive right to a service provider for a term in excess of one (1) year after the time it is entered into and has any of the following characteristics:

(a) The service agreement purports to run with the land or to be binding on future owners of interests in the real property;

(b) The service agreement allows for assignment of the right to provide service without notice to and consent of the owner of residential real property; or

(c) The service agreement is recorded or purports to create a lien, encumbrance, or other real property security interest.

(2) The following are not unfair service agreements pursuant to this chapter:

(a) A home warranty or similar product that covers the cost of maintenance of a major home system or appliance for a fixed period;

(b) An insurance contract;

(c) A mortgage loan or a commitment to make or receive a mortgage loan;

(d) An option or right of refusal to purchase the residential real property;

(e) A declaration of any covenants, conditions, or restrictions created in the formation of a homeowners association, a group of condominium owners, or other common interest community or an amendment thereto;

(f) A maintenance or service agreement entered by a homeowners association in a common interest community;

(g) A security agreement governed by Idaho's uniform commercial code relating to the sale or rental of personal property or fixtures;

(h) A contract with a gas, water, sewer, electrical, telephone, cable, or other utility service provider; or

(i) A contract for the provision of water to real property for domestic, irrigation, or other purposes.

(3) This chapter does not impair any lien right granted pursuant to Idaho Code or judicially imposed.

[48-2003, added 2023, ch. 242, sec. 1, p. 741.]

48-2004. RECORDING PROHIBITED -- COUNTY RECORDER IMMUNITY. (1) No person shall present or send to any county recorder for recording or cause to be recorded by said recorder an unfair service agreement or notice or memorandum thereof.

(2) In the event that a county recorder does record an unfair service agreement, the county recorder shall incur no liability for doing so.

(3) If an unfair service agreement is recorded, it shall not create a lien or provide constructive notice to any third party, bona fide purchaser, or creditor.

[48-2004, added 2023, ch. 242, sec. 1, p. 742.]

48-2005. UNFAIR SERVICE AGREEMENTS UNENFORCEABLE. If a service agreement is unfair pursuant to this chapter, it is unenforceable, shall not create a contractual obligation or relationship, and attempting to enforce the same is a violation of the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code. Any waiver of a consumer right, including a right to trial by jury, in an unfair service agreement is void.

[48-2005, added 2023, ch. 242, sec. 1, p. 742.]

48-2006. SOLICITATION OF UNFAIR SERVICE AGREEMENTS. Encouraging any consumer to enter into an unfair service agreement by any service provider constitutes an unfair method of competition and an unfair or deceptive act or practice under the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

[48-2006, added 2023, ch. 242, sec. 1, p. 742.]

48-2007. AUTHORITY OF THE ATTORNEY GENERAL AND THE DISTRICT COURTS. The attorney general and the district court shall have the same authority in enforcing and carrying out the provisions of this chapter as is granted the attorney general and district courts under the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code. Said authority shall be non-exclusive.

[48-2007, added 2023, ch. 242, sec. 1, p. 742.]

48-2008. REMEDIES. (1) Any consumer that is party to an unfair service agreement related to residential real property or any person with an interest in the property that is the subject of that agreement may bring an action in district court in the county where the property is located to obtain a declaratory judgment that the agreement is unenforceable and to recover any other damages, costs, and attorney's fees as may be proven.

(2) In the event that an unfair service agreement or a notice or memorandum thereof is recorded against any residential real property, any judgment obtained pursuant to this section, once certified by the clerk having custody thereof, may be recorded and indexed against the real property encumbered or clouded by the unfair service agreement.

(3) The remedies provided for in this chapter are not exclusive and shall not reduce any other rights or remedies a party may have in equity or in law.

(4) No private action may be brought pursuant to this chapter more than two (2) years after the expiration of the term printed in the unfair service agreement.

[48-2008, added 2023, ch. 242, sec. 1, p. 743.]