

WFG Informational Bulletin

To: All Florida Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: June 2, 2023
Bulletin No.: FL 2023-23
Subject: Residential Loan Alternative Agreements SB 770

On May 24, 2023, Governor DeSantis signed Senate Bill 770 to law which takes effect on July 1, 2023 ("Bill"). The Bill created F.S. Section 475.279 to prohibit MV Realty type agreements from being enforced against Real Property or against the proceeds from a sale of real property.

Background

MV Realty PBC, LLC's ("MV Realty") created a Homeowner Benefit Program ("HBP"). Under that program, MV Realty would pay a homeowner a certain amount of money ("Promotion Fee") to sign a Homeowner Benefit Agreement ("HBA"). The Promotion Fee varied but the amount could range from \$300 to \$5,000. Under the HBA, the owner agreed that if the owner decided to sell their property anytime during the 40 years following execution of the HBA, the owner would sign an exclusive listing agreement with MV Realty and pay a MV Realty a 6% commission upon a sale of the property. The HBA provided that the owner's obligations under the HBA constituted covenants running with the land, were binding on future owners of the property, and were secured by a security interest and lien against the property.

The HBA provided for an Early Termination Fee of 3% of the fair market value of the property. The Early Termination Fee would be triggered if the property was sold without payment of the 6% commission to MV Realty or if the property was listed with another broker. Finally, the HBA gave MV Realty the right to record a Memorandum of the HBA to provide constructive notice of the obligations of the owner under the HBA. The recorded Memorandum provides that it is the intent of the parties that the recorded Memorandum provide notice that the obligations of the owner under the HBA are covenants that run with the land and bind future owners of the property.

Bill

The Bill created F.S. 475.279 and created the term "Residential Loan Alternative Agreement". The Bill defines Residential Loan Alternative Agreement as a written agreement or contract between a person and a seller or owner of residential real property that:

1. Grants an exclusive right to a person to act as a broker for the disposition (conveyance) of the property;
2. Has a duration of more than 2 years; and
3. Requires the person (broker) to pay money to the owner / seller.

Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.

The Bill provides that an agreement which constitutes a Residential Loan Alternative Agreement:

1. May not authorize a lien, constitute a lien, encumbrance, or security interest against the property; may not be enforced by a court against the property as a lien or constructive trust; and may not be enforced against the proceeds from a sale of the property.
2. May not be assigned.
3. Is void if the listing services are not commenced within 90 days after both parties sign the agreement.
4. May not be recorded by the Clerk.
5. Is unenforceable if it does not meet the requirements of F.S. 475.279

The Bill defines Residential Real Property to mean improved residential property of four or fewer residential dwelling units or unimproved real property on which four or fewer residential dwellings may be constructed.

The Bill provides that a violation of F.S. 475.279 is deemed an unfair or deceptive trade practice under Chapter 501.

The effective date of the Bill is July 1, 2023. The Bill is not retroactive. Therefore, it does not affect MV Realty type agreements entered into prior to July 1, 2023. In a current transaction, any MV Realty type agreement signed before July 1, 2023 and recorded against the property must be released from the property.

Click here for a copy of the Bill: [SB 770](#)

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