

House Bill 669

By: Representative Smith of the 18th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, so as to provide for future real estate listing right purchase contracts; to provide for
3 definitions; to provide for a short title; to provide for contract requirements; to provide for
4 prohibitions; to provide for required disclosures, terms, and conditions; to provide for
5 cancellation; to provide for construction; to provide for assignment and recording of such
6 contracts; to require and provide for registration of purchasing companies with the Secretary
7 of State; to authorize the Secretary of State to adopt rules and regulations; to provide for
8 legislative intent; to provide for an effective date and applicability; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 It is the intent of the General Assembly that to promote consumer protections in connection
13 with transactions and agreements related to the purchase of future real estate listing rights
14 from consumers, this Act shall establish that such transactions be subject to state regulation
15 and set forth requirements regarding disclosure, company registration, limitations, violations,
16 and other matters.

H. B. 669

17 **SECTION 2.**

18 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
19 amended by adding a new chapter to read as follows:

20 "CHAPTER 6C21 10-6C-1.

22 This chapter shall be known and may be cited as the "Listing Rights Purchase Act."

23 10-6C-2.

24 As used in this chapter, the term:

25 (1) 'Consumer' means a natural person who has a pending legal interest in real property
26 that is the subject of a future listing right purchase contract and who resides or is
27 domiciled in this state.

28 (2) 'Contract purchase price' means the amount of money paid to a consumer as
29 consideration for entering into a future listing right purchase contract.

30 (3) 'Future listing right purchase contract' means a contractual right to obligate a
31 consumer to enter into a real estate listing agreement with a particular individual or entity
32 relating to the future sale of a residential home, townhouse, or condominium.

33 (4) 'Purchase date' means the date on which the contract purchase price is transferred to
34 the consumer by the company either by personal delivery or via wire, ACH or other
35 electronic means, or mailed by insured, certified, or registered United States mail.

36 (5) 'Purchasing company' or 'company' means a person or entity that enters into a future
37 listing right purchase contract.

38 (6) 'Real estate listing agreement' means an agreement to list real estate for sale.

39 10-6C-3.

40 All future listing right purchase contracts shall meet the following requirements:

41 (1) All blanks in the contract shall be completely filled in when it is presented to the
42 consumer for signature;

43 (2) The contract shall contain, in at least 12 point bold font, a right of rescission,
44 allowing the consumer to cancel the contract without penalty or further obligation if,
45 within five business days after the funding date, the consumer either:

46 (A) Returns to the company the full amount of the disbursed funds by delivering the
47 company's uncashed check to the company's office in person; or

48 (B) Mails, by insured, certified, or registered United States mail, to the address
49 specified in the contract, a notice of cancellation and includes in such mailing a return
50 of the full amount of disbursed funds in the form of the company's uncashed check or
51 a personal check or certified check or money order;

52 (3) The contract shall contain the initials of the consumer on each page;

53 (4) The contract shall contain a statement that there are no fees or charges to be paid by
54 the consumer other than those referenced in the disclosure forms provided for in Code
55 Section 10-6C-5;

56 (5) The contract shall allow for the cancellation of the contract within a period of 90 days
57 from the death of the consumer by such consumer's heirs, provided that they mail, by
58 insured, certified, or registered United States mail, to the address specified in the contract,
59 a notice of cancellation and include in such mailing a return of the full amount of
60 disbursed funds in the form of the company's uncashed check or a registered or certified
61 check or money order;

62 (6) The contract shall set forth how all charges, including any applicable fees, are
63 incurred or accrued; and

64 (7) If the consumer does not speak English, the contract shall be in the language spoken
65 by the consumer.

66 10-6C-4.

67 (a) Purchasing companies shall be prohibited from:

68 (1) Intentionally advertising materially false information regarding its products or
69 services; and

70 (2) Contracting for any right to establish the listing or sale price for a property owned by
71 the consumer, which right to make such determinations shall remain solely with the
72 consumer.

73 (b) No future listing right purchase contract shall have a term greater than 30 years from
74 the purchase date.

75 10-6C-5.

76 (a) All future listing right purchase contracts shall contain the disclosures specified in this
77 Code section, which shall constitute material terms of the contract. Unless otherwise
78 specified, the disclosures shall be typed in at least 12 point bold font in the contract as
79 follows:

80 (1) On the front page of the contract, under an appropriate heading, the contract shall
81 contain language specifying:

82 (A) The purchase price to be paid to the consumer by the purchasing company; and

83 (B) Any amounts the consumer will be required to pay under the terms of the future
84 listing right purchase contract;

85 (2) The body of the contract shall contain the following language:

86 'Consumer's right to cancellation: you may cancel this contract without penalty or
87 further obligation within five (5) business days after the purchase date if you either:

88 1. Return to the purchasing company the full amount of the purchase price by
89 delivering the company's uncashed check to the company's office in person; or

90 2. Mail, by insured, certified, or registered United States mail, to the company at the
91 address specified in the contract, a notice of cancellation and include in such mailing

92 a return of the full amount of the purchase price in the form of the company's
93 uncashed check or a registered or certified check or money order.';

94 (3) The contract shall state that the purchasing company shall have no right to compel
95 a consumer to list, or to decide when or if a consumer should list, his or her home for
96 sale;

97 (4) Located immediately above the place on the contract where the consumer's signature
98 is required, in 12 point bold font with a box around it, the contract shall include the
99 following notice:

100 'Do not sign this contract before you read it completely. Do not sign this contract if it
101 contains any blank spaces. You are entitled to a completely filled-in copy of the
102 contract before you sign this contract. You should obtain the advice of an
103 attorney.'; and

104 (5) The contract shall state that a copy of the executed contract shall be delivered to the
105 consumer within seven business days from the date the consumer signs it.

106 10-6C-6.

107 (a) If a court of competent jurisdiction determines that a purchasing company has willfully
108 committed a deceptive and abusive violation of this chapter with regard to a future listing
109 right purchase contract or if a purchasing company fails to register under this chapter, the
110 agreement shall be null and void.

111 (b) Nothing in this chapter shall be construed to cause any future listing right purchase
112 contract conforming to this chapter to be deemed a loan or to be subject to any provisions
113 of law governing loans. A future listing right purchase contract that complies with this
114 chapter is not subject to any statutory or regulatory provisions governing loans or
115 investment contracts. To the extent that this chapter conflicts with any other law, this
116 chapter supersedes any other law for the purposes of regulating future listing right purchase
117 contracts and purchasing companies in the State of Georgia.

118 (c) Nothing in this chapter shall be construed to restrict the exercise of the powers or the
119 performance of the duties of the Attorney General or the Secretary of State, which he or
120 she is authorized to exercise or perform by law.

121 10-6C-7.

122 (a) A future listing right purchase contract is assignable by the deferred listing company.

123 (b) A future listing right purchase contract may be recorded on the property to which it
124 relates and shall be perfected by recording in the same manner that an easement, mortgage,
125 or other interest in real property is recorded. All recorded documents shall take priority by
126 normal operation of law. Notwithstanding the forgoing, any recorded future listing right
127 purchase contract shall be subordinate to a financing, refinancing, or home equity line of
128 credit the consumer seeks subsequent to the effective date of the future listing right
129 purchase contract.

130 10-6C-8.

131 (a) Unless a purchasing company has first registered with the Secretary of State pursuant
132 to this chapter, the company may not enter into a future listing right purchase contract in
133 this state.

134 (b) An applicant's registration shall be filed in the manner prescribed by the Secretary of
135 State and shall contain all information determined necessary by the Secretary of State,
136 including, but not limited to, the name of the company, its owners and principal operators,
137 the company's domicile, and, if the company is not domiciled in the State of Georgia, the
138 designation of a registered agent. The initial application must be accompanied by payment
139 of a \$7,500.00 fee. A renewal registration must include payment of a \$5,000.00 fee.
140 Registrations shall be renewed every two years and expire on September 30.

141 (c) An applicant shall also, at the time of filing such application, file with the Secretary of
142 State, if so required, a bond satisfactory to the Secretary of State in an amount not to

143 exceed \$50,000.00. In lieu of the bond, at the option of the registrant, the registrant may
144 post an irrevocable letter of credit. The terms of the bond shall run concurrent with the
145 period of time during which the registration will be in effect. The bond shall provide that
146 the registrant faithfully conform to and abide by the provisions of this chapter and to all
147 rules and regulations lawfully made by the Secretary of State under this chapter and shall
148 pay to any such person or persons any and all amounts of money that may become due or
149 owing to the state or to such person or persons from the registrant under and by virtue of
150 this chapter during the period for which the bond is given.

151 (d) Notwithstanding the prior approval requirement of subsection (a) of this Code section,
152 a purchasing company that registered with the Secretary of State between the effective date
153 of this chapter and the date the Secretary of State made applications available to the public,
154 whichever is later, and 180 days thereafter, may engage in future listing right purchase
155 contracts while the company's registration is pending approval with the Secretary of State.
156 All future listing right purchase contracts entered into prior to the effective date of this
157 chapter shall not be subject to the provisions of this chapter.

158 (e) No purchasing company may use any form of future listing right purchase contract
159 unless it has been filed with the Secretary of State in accordance with the filing procedures
160 set forth by the Secretary of State.

161 (f) The Secretary of State shall be authorized to adopt rules and regulations to implement
162 the provisions of this Code section as needed."

163 **SECTION 3.**

164 This Act shall become effective on the 180th day after it has been signed by the Governor
165 or becomes law without such approval; provided, however, that it shall not apply to or in any
166 way affect or invalidate any future listing right purchase contract entered into prior to the
167 effective date of this Act.

168

SECTION 4.

169 All laws and parts of laws in conflict with this Act are repealed.