

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 779

Short Title: Rental Housing Listing Service Act.

(Public)

Sponsors: Senators Cooper; and Daniel.

Referred to: Economic Development.

April 24, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE RENTAL HOUSING LISTING SERVICES.

3 The General Assembly of North Carolina enacts:

4 Section 1. Effective January 1, 1992, Chapter 66 of the General Statutes is
5 amended by adding a new Article to read:

6 **“ARTICLE 20.**

7 **“RENTAL HOUSING LISTING SERVICES.**

8 **“§ 66-220. Regulation of rental housing listing services.**

9 Definitions. As used in this Article, unless the context clearly requires otherwise:

- 10 (1) ‘House order’ means an oral or written communication from a landlord
11 authorizing a rental housing listing service to transmit, publish or
12 advertise information about available residential real estate to
13 prospective tenants.
14 (2) ‘Landlord’ means any person offering residential housing for rent to a
15 prospective tenant.
16 (3) ‘Licensee’ means any person licensed by the Secretary to operate a
17 rental housing listing service.
18 (4) ‘Person’ means any individual, association, partnership, or corporation.
19 (5) ‘Prospective tenant’ means any person seeking to enter into a
20 residential rental agreement with a landlord.
21 (6) ‘Rental housing listing service’ or ‘listing service’ means any business
22 operated in the State of North Carolina by any person for profit which
23 publishes, either orally or in writing, lists of specific residential real
24 estate available with any landlord other than itself or which holds itself

1 out to prospective tenants as able to provide information about specific
2 residential real estate available with any landlord other than itself,
3 which charges a fee to any prospective tenant for its services or
4 purported services, and which performs none of the activities of a
5 rental referral agency, as defined under G.S. 66-142, other than the
6 publishing of listings of available residential real estate. 'Rental
7 housing listing service' does not include:

- 8 a. An educational, religious, charitable, fraternal, or benevolent
9 organization which charges no fee for services rendered in
10 providing information about residential real estate;
11 b. A rental housing listing service operated by the State of North
12 Carolina, the government of the United States, or any city,
13 county, or town, or any agency thereof;
14 c. A temporary rental housing listing service that charges no fee
15 for services rendered in providing information about residential
16 real estate;
17 d. A newspaper, magazine, or periodical of general circulation, or
18 other business engaged primarily in communicating information
19 other than information about specific residential real estate and
20 that does not purport to adapt the information provided to the
21 needs or desires of an individual prospective tenant.

22 (7) 'Residential real estate' means any parcel of real estate, improved or
23 unimproved, that is exclusively residential in nature and that includes
24 or is intended to include a residential structure and no other
25 improvements except those which are typical residential improvements
26 that support the residential use for the location and property type. A
27 residential unit in a condominium, townhouse, or cooperative complex
28 or a planned unit development is considered to be residential real
29 estate.

30 (8) 'Secretary' means the North Carolina Secretary of State or any person
31 designated by the Secretary as the representative of the Secretary.

32 **"§ 66-221. License and bond required.**

33 (a) No person shall operate a rental housing listing service in North Carolina
34 without first obtaining a license from the Secretary.

35 (b) Every rental housing listing service before beginning business shall post a
36 bond. The amount of the bond shall at no time be less than ten thousand dollars
37 (\$10,000). The rental housing listing service shall file the bond with the Secretary and
38 with the clerk of the superior court of the county in which its principal place of business
39 is located.

40 (c) Any person who is damaged by any violation of this Article or by any breach
41 of the rental housing listing service of its contract, may bring an action for the remedies
42 referred to and provided in G.S. 66-224 against the bond; provided that the aggregate
43 liability of the surety or trustee shall not exceed the amount of the bond.

44 (d) Violation of subsection (b) of this section shall constitute a misdemeanor.

1 "§ 66-222. Licensing procedures.

2 (a) An application for license shall be made to the Secretary. If the rental
3 housing listing service is owned by an individual, the application shall be made by that
4 individual; if the listing service is owned by a partnership, the application shall be made
5 by all partners; if the listing service is owned by a corporation, the application shall be
6 made by all stockholders who own at least twenty percent (20%) of the issued and
7 outstanding voting stock of the corporation, or if the listing service is owned by an
8 association, society, or corporation in which no one individual owns at least twenty
9 percent (20%) of the issued and outstanding voting stock, the application shall be made
10 by the president, vice-president, secretary and treasurer, or the owner, by whatever title
11 designated. The application shall state the name and address of the individual who is
12 responsible for the direction and operation of the activities of the rental housing listing
13 service whether that individual is one of the applicants or another person; whether or not
14 that individual has ever been employed in a rental housing listing service; the name and
15 address of each of the license applicant's prior employers during the five years
16 immediately preceding the license application; and such other information relating to
17 the good moral character of that individual as the Secretary may require. No change in
18 such persons shall take place without prior notification to the Secretary.

19 (b) Each application for license shall be in writing and in the form prescribed by
20 the Secretary, and shall state truthfully the name under which the business is to be
21 conducted; the street and number of the building or place where the business is to be
22 conducted.

23 (c) Upon the receipt of an application for a license the Secretary:

24 (1) Shall publish a notice of the pending application in a newspaper of
25 general circulation in the area of the proposed location of the rental
26 housing listing service and may publish the notice in a newspaper of
27 general circulation in each area in which the applicant (or if a
28 corporation, the president and majority shareholder) has resided during
29 the five years preceding the time of the application. The notice shall
30 include a statement informing individuals of their right to protest the
31 issuance of a license by filing within 10 days written comments with
32 the Secretary. The protest shall be in writing and signed by the person
33 filing the protest or by his authorized agent or attorney, and shall state
34 reasons why the license should not be granted. Upon the filing of a
35 protest, the Secretary, if he determines that protest to be of such a
36 nature that a hearing should be conducted and that the protest is for a
37 cause on which denial of a license may properly be based, shall
38 appoint a time and place for a hearing on the application and shall give
39 at least seven days' notice of that time and place to the license
40 applicant and to the person filing the protest. The hearing shall be
41 conducted in accordance with the provisions of the Administrative
42 Procedure Act;

43 (2) Shall investigate the character, criminal record, and business integrity
44 of each applicant for license and shall investigate the criminal records

1 of all persons listed as owners, officers, directors or managers. The
2 applicant and all owners, officers, directors and managers shall assist
3 the department in obtaining necessary information by authorizing the
4 release of all relevant information.

5 (3) Upon completion of the investigation, or 30 days after the application
6 was received, whichever is later, but in no case more than 45 days after
7 the application was received, shall determine whether or not a license
8 should be issued. The license shall be denied for any of the following
9 reasons:

10 a. If the applicant for license, or the president or majority
11 shareholder of a corporate applicant, omits or falsifies any
12 material information asked for in the application and required
13 by the Secretary;

14 b. If the owner, officer, director or manager of the listing service:

15 1. Has been convicted in any state of the criminal offense
16 of embezzlement, obtaining money under false
17 pretenses, forgery, conspiracy to defraud or any similar
18 offense involving fraud or moral turpitude;

19 2. Was an owner, officer, director or manager of a listing
20 service or other business whose license was revoked or
21 that was otherwise caused to cease operation by action of
22 any state or federal agency or court because of violations
23 of law or regulation relating to deceptive or unfair
24 practices in the conduct of business;

25 3. As an owner or manager of a listing service or other
26 business was found by any state or federal agency or
27 court to have violated any law or regulation relating to
28 deceptive or unfair practices in the conduct of business;
29 or

30 4. In any other demonstrable way engaged in deceptive or
31 unfair practices in the conduct of business.

32 (d) If it appears upon the hearing or from the inspection, examination or
33 investigation made by the Secretary that the owners, partners, corporation officers, or
34 the listing service manager are not persons of good moral character or that the license
35 applicant has not complied with the provisions of this Article, the application shall be
36 denied and a license shall not be granted. The Secretary shall find facts to substantiate
37 his denial of the issuance of a license. Each application shall be granted or refused
38 within 30 days from the date of its filing, or if a hearing is held, within 45 days. Any
39 license heretofore or hereafter issued shall expire 12 months from the date of its
40 issuance, and shall be renewed as hereinafter provided unless sooner revoked by the
41 Secretary.

42 (e) No license shall be granted to a person to operate as a rental housing listing
43 service where the name of the business is similar or identical to that of any existing
44 licensed business (except where a franchiser has licensed two or more persons to use the

1 same name within the State) or directly or indirectly expresses or connotes any
2 limitation, specification, or discrimination contrary to current State or federal laws
3 against discrimination in housing.

4 (f) Every license shall contain the name of the person licensed and shall
5 designate the city in which the license is issued, the name of the manager and date of the
6 license. The license shall be displayed in a conspicuous place in the area where
7 applicants for services are received by the listing service.

8 (g) A license granted as provided in this Article shall not be valid for any person
9 other than the person to whom it is issued or for any place other than that designated in
10 the license and shall not be assigned or transferred without the consent of the Secretary,
11 whose consent must be based on the standards contained in this Article. Applications
12 for consent to assign or transfer shall be made in the same manner as an application for
13 a license, and all the provisions of this Article shall apply to applications for consent.
14 The location of a rental housing listing service shall not be changed without notice to
15 the Secretary, and any change of location shall be endorsed upon the license. A person
16 who has obtained a license in accordance with the provisions of this Article may apply
17 for additional licenses to conduct additional rental housing listing services in
18 accordance with the provisions of this Article. The manner of application, and the
19 conditions and terms applicable to the issuance of the additional licenses shall be the
20 same as for an original license. The same listing service manager may be designated in
21 all such licenses.

22 (h) Temporary license. – If ownership of a licensed rental housing listing service
23 is transferred, the Secretary shall issue a temporary license to any new owner or
24 successor if it appears to the Secretary that issuance of such a license would serve the
25 public interest. A temporary license shall be effective for a period of 90 days and shall
26 not be renewed.

27 **"§ 66-223. Administration and enforcement of Article; civil penalties; remedies.**

28 (a) This Article shall be administered and enforced by the Secretary. The
29 Secretary or any duly authorized agent, deputies or assistants designated by the
30 Secretary, may upon receipt of a complaint that a rental housing listing service has
31 violated a specific section of this Article, inspect those records relevant to the complaint
32 which this Article requires the listing service to retain. The Secretary may also
33 subpoena those records and witnesses and may conduct investigations of any person
34 where the Secretary has reasonable grounds for believing that the person has conspired
35 or is conspiring with a listing service to violate this Article.

36 (b) The Secretary may make reasonable administrative rules within the standards
37 set in this Article and in accordance with Chapter 150B of the General Statutes.

38 (c) Complaints against any licensed person shall be made in writing to the
39 Secretary, or be sent in affidavit form without a personal appearance of the complainant.
40 If the complaint alleges a violation of this Article, the Secretary shall cause an
41 investigation to be made. If, as a result of the investigation, the Secretary has reason to
42 believe that a material violation of this Article has been committed by a rental housing
43 listing service, the Secretary may hold a hearing. Reasonable notice thereof, not less
44 than 10 days, shall be given in writing to the licensed person involved by serving upon

1 him either personally, by registered or certified mail, or by leaving the same with the
2 manager, a copy of the complaint. A hearing shall be held before the secretary with
3 reasonable promptness but in no event later than 30 calendar days from the date of the
4 filing of the complaint. The Secretary, when investigating any matters pertaining to the
5 granting, issuing, transferring, renewing, revoking, suspending or canceling of any
6 license may take such testimony as he deems necessary on which to base official action.
7 When taking such testimony he may subpoena witnesses and also direct the production
8 before him of necessary and material books and papers. A daily calendar of all hearings
9 shall be kept by the Secretary and shall be posted in a conspicuous place in his public
10 office for at least one day before the date of the hearings. The Secretary shall render his
11 decision within eight calendar days from the date of the completion of the hearing. The
12 Secretary shall keep a record of all such complaints and hearings.

13 (d) If at the hearing conducted pursuant to subsection (c) of this section, it has
14 been shown that the rental housing listing service or any employee of that listing service
15 is guilty of violating the provisions of this Article, the Secretary may issue a warning,
16 citation, or notice of violation, or may revoke or suspend the listing service's license.
17 Whenever the Secretary suspends or revokes the license of any rental housing listing
18 service, the determination is subject to judicial review in proceedings brought pursuant
19 to the Administrative Procedure Act. Whenever a license is revoked, another license
20 shall not be issued to the same person within three years from the date of the revocation.
21 The Secretary may conduct hearings and act upon applications for licenses, and may
22 revoke or suspend such licenses, or levy fines.

23 (e) Any person who operates as a rental housing listing service without first
24 obtaining the appropriate license (i) shall be subject to the following:

- 25 (1) Any person injured by a violation of this Article or contract subject
26 thereto, may bring an action for recovery of damages, including
27 reasonable attorneys' fees.
- 28 (2) The violation of any provision of this Article constitutes an unfair act
29 or practice under G.S. 75-1.1.
- 30 (3) The remedies provided herein shall be in addition to any other
31 remedies by law or equity.

32 **"§ 66-224. Contracts; contents; approval.**

33 A contract between a rental housing listing service and a prospective tenant shall be
34 in writing, labeled as a contract, physically separate from any application form and
35 made in duplicate and shall include:

- 36 (1) A clear explanation of the services provided and the amount of the fee;
- 37 (2) In a type size no smaller than nine point, a statement that reads 'I
38 understand that (name of rental housing listing
39 service) does not guarantee that I will obtain residential real estate
40 through its services. I understand that (name of rental
41 housing listing service) does not refund fees for any reason,' unless the
42 rental housing listing service agrees in the contract to refund to the
43 prospective tenant any fee the prospective tenant paid to the rental
44 housing listing service if within three months of paying such fee the

1 prospective tenant has not entered into a lease for residential real estate
2 with a landlord listed in a publication of the rental housing listing
3 service;

4 (3) A statement that the rental housing listing service is not a rental
5 referral agency, that no additional fee will be charged to the
6 prospective tenant upon acceptance of a lease for or occupation of
7 residential rental housing and that the rental housing listing service
8 will not set up interviews or otherwise arrange direct contacts between
9 a landlord and the prospective tenant; and

10 (4) A statement that the rental housing listing service is licensed and
11 regulated by the Secretary and the address at which a copy of
12 regulations governing rental housing listing services may be obtained.

13 A copy of each contract form to be used with the prospective tenants shall be filed
14 with the Secretary. A rental housing listing service shall not use any contract form with
15 a prospective tenant unless and until the agency receives from the Secretary of State
16 written notification that the contract form conforms to the requirements of the Article.
17 A rental housing listing service shall not accept a fee from any prospective tenant before
18 the prospective tenant has read and received a copy of the contract.

19 **"§ 66-225. Advertising and publication.**

20 (1) In conducting any form of advertising, a rental housing listing service
21 shall identify itself by its business name and identify itself as a rental
22 housing listing service by using in the name or elsewhere in the
23 advertising the term 'rental housing listing service.'

24 (2) Prior to advertising or publishing information about any available
25 residential real estate, a rental housing listing service shall receive a
26 house order and shall record the house order, the date it was received
27 and the name of the landlord or other person who gave the house order
28 to the rental housing listing service. No description or representation
29 of residential real estate shall be stated in any advertising or other
30 publication, unless the information is included on the recorded house
31 order for the residential real estate. Information about a single
32 residential real estate shall not be used in more than one advertisement
33 or listing in a single issue of any publication.

34 (3) A rental housing listing service shall not submit for publication or
35 cause to be published any information about the availability of
36 residential real estate unless the availability of such residential real
37 estate as described in such publication or advertisement has been
38 verified within five days prior to the appearance of the publication or
39 advertisement.

40 (4) A rental housing listing service shall not make any representation that
41 any residential real estate is available for rent unless its availability has
42 been verified by the rental housing listing service within five days
43 prior to the representation. Notations of the time and date of
44 verification and the verifier's identity shall be recorded by the rental

1 housing listing service and made available for inspection by any
2 person from whom the rental housing listing service has received a fee.

3 (5) A rental housing listing service shall not make representations
4 regarding or cause to be published any information which it knows or
5 reasonably ought to know is false or deceptive or which it has no
6 reasonable basis for believing to be true.

7 (6) In conducting any form of advertising, a rental housing listing service
8 shall not use the term 'no fee' or any other term indicating that
9 prospective tenants will not be financially obligated to the rental
10 housing listing service.

11 **"§ 66-226. Fee receipts.**

12 A rental housing listing service shall give every prospective tenant from whom
13 payment is received a receipt stating the name and address of the rental housing listing
14 service, the name of the prospective tenant, the date and the amount of the payment.

15 **"§ 66-227. Prohibited real estate listings.**

16 A rental housing listing service shall not publish information about residential real
17 estate available with a landlord that the rental housing listing service knows or has
18 reason to know:

19 (1) Has included false information in the house order; or

20 (2) Is engaging in unlawful or immoral activity.

21 **"§ 66-228. Records of the rental housing listing service.**

22 Each rental housing listing service shall maintain and make available for inspection
23 by the Secretary the following records of the operation of the rental housing listing
24 service for the 18 months immediately preceding:

25 (1) The rental housing listing service's copies of all contracts executed
26 with prospective tenants;

27 (2) Copies of all fee receipts;

28 (3) Copies of all advertising and residential real estate lists published
29 orally or in writing, indexed or attached to the recorded house order,
30 including the date it was received and the name of the landlord who
31 gave it, for each residential real estate advertised or listed, and records
32 of the dates advertisements were run on publications issued; and

33 (4) Any records required by the Secretary under regulations adopted
34 pursuant to this Article.

35 **"§ 66-229. Review of rental housing listing services.**

36 After the Secretary receives written statements from two or more prospective tenants
37 complaining that the prospective tenants failed to obtain residential real estate as a result
38 of the services of a rental housing listing service, the Secretary may contact other
39 prospective tenants who have paid a fee to the rental housing listing service for the
40 purpose of determining what percentage of prospective tenants obtained residential real
41 estate as a result of the services of the rental housing listing service. After gathering
42 information from such prospective tenants and following the requirements of due
43 process, the Secretary shall place the survey results in the public records."

44 Sec. 2. This act is effective upon ratification.