

Trapped by NTRAPS?

By G. Leigh Curry



Since about 2018, Non-Title Recorded Agreements for Personal Services – commonly known as NTRAPS – have been recorded in property records. What are they, and do they do homeowners more harm than good?

NTRAPS offer small cash gifts to homeowners in exchange for decades-long contracts for the exclusive rights to list and sell their properties. These agreements are recorded against the property in exchange for a one-time payment to the title holder. The problem is the payment is usually minimal – ultimately costing the homeowner a significant amount of money.

The NTRAPS Set-Up

The scenario begins when an NTRAPS company – typically a service provider like a real estate agency – approaches the homeowner to offer a small, one-time payment in exchange for the homeowner executing a “Homeowner Benefit Agreement.” The homeowner agrees to use the real estate broker in the event they choose to sell their home.

However, the homeowner soon finds it is not that simple, and that they have signed away certain rights. The payment the homeowner receives is often less

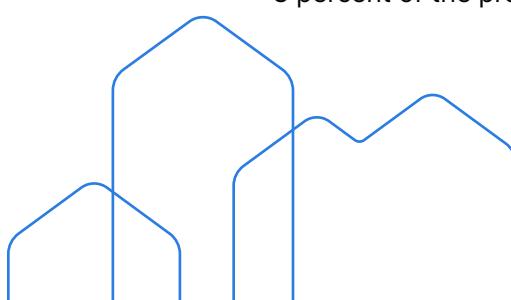
than \$1,000, but the “Homeowner Benefit Agreement” is recorded against the property, creating a lien against it that encumbers the property – sometimes for as long as 40 years.

The agreement also requires the homeowner to use the NTRAPS company as the selling broker if the house is put up for sale. The agreement requires the homeowner to pay a commission fee of 6 percent of the total sales price.

If the proposed buyer is working with their own real estate agent, the NTRAPS company must be paid either 3 percent of the sales price, or 3 percent of the value of the property at the time of signing of the agreement, whichever is greater.

If there is no buyer-broker, the homeowner must pay the NTRAPS company 6 percent of the purchase price, or 3 percent of the property's value at the time, whichever is greater.

If the homeowner sells the home without using a real estate agent, or uses a different broker, the homeowner is still obligated to pay the NTRAPS company their “pound of flesh,” 3 percent of the property value, per the terms of the agreement. Even if the homeowner elects to terminate the agreement, the typical NTRAPS agreement provides for a hefty early termination fee of 3 percent of the property's value.



Tennessee Victim

One recently reported scenario involved a 69-year-old woman in Nashville, Tennessee. This homeowner owned a home with her husband, but he was moved to a retirement home. Since she also started to show symptoms of dementia, her son and daughter-in-law moved in to help with her care. An NTRAPS company contacted the homeowner while her son and daughter-in-law were out of town and influenced her to sign a "Homeowner's Benefit Agreement." The company only paid \$985 and recorded the 40-year agreement/lien on her house. The homeowner mistakenly believed the \$985 was a loan, but she had no idea how much bigger a lien she had allowed to be recorded against her home.

A year later, when the homeowner went to sell her home to her son and daughter-in-law, without any broker involvement, the lien was discovered. They tried to work with the company to have the lien removed, but were told they could either extend the agreement, or pay \$25,000 for an early termination to the agreement.

This story actually has a happy ending, because a local news station took up this homeowner's defense and contacted the NTRAPS company. Considering the homeowner's possible lack of capacity, the company ultimately backed down and released the agreement. However, not all homeowners are able to get these

agreements released and have the same sort of happy ending.

The plight of this homeowner came to the attention of a Tennessee state representative, and Tennessee joined several other states that have passed legislation to combat NTRAPS companies and their "Homeowner Benefit Agreements."

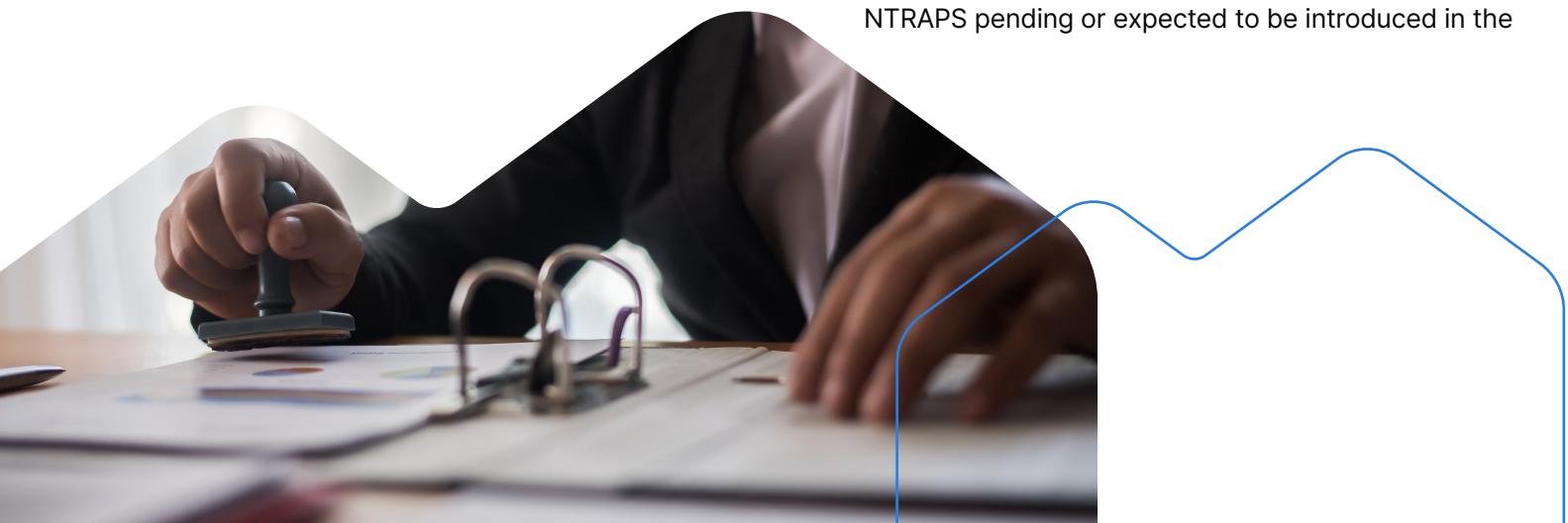
State Legislatures and AGs Take Action

As more and more victims of NTRAPS have come forward, state legislators and state attorneys general have taken action to help these homeowners and to prevent others from falling prey to the same trap.

As of the writing of this blog in August 2023, these states have passed laws prohibiting NTRAPS:

- Alabama
- Colorado
- Florida
- Georgia
- Idaho
- Iowa
- Maine
- Maryland
- North Dakota
- Ohio
- Tennessee
- Utah (first state to pass a law)
- Washington

Multiple other states have similar bills prohibiting NTRAPS pending or expected to be introduced in the



states' next legislative sessions.

Additionally, the attorneys general in these six states have filed lawsuits against NTRAPS companies:

- Florida
- Massachusetts
- North Carolina
- New Jersey
- Ohio
- Pennsylvania

ALTA Model Bill and State Bills

The American Land Title Association (ALTA) has drafted a model bill to help states eliminate NTRAPS and address the harm they can cause to homeowners.

The model bill and the states' bills that have already passed have similar provisions. These bills make the NTRAPS unenforceable by law. The bills prohibit the recording of new NTRAPS agreements and create penalties if those agreements are recorded. The bills

also provide for the removal of NTRAPS agreements if already recorded and provide for recovery of damages by the impacted homeowners.

If you find an NTRAPS agreement in one of your real estate transactions, check your state statutes to see if any recently enacted law will help remove these lien traps from the property or make their terms unenforceable.

Doma Title Insurance underwriting counsel are always available to answer any questions our agents may have regarding NTRAPS, or any other issue – and we will get back to our agents within one hour, guaranteed.

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