

SENATE BILL REPORT

ESHB 2059

As Reported by Senate Committee On:
Business, Financial Services & Trade, February 22, 2022

Title: An act relating to real estate agency law, but only to clarify that the statutory duties of real estate brokers apply to all parties and prohibiting the delivery of buyer unfair practice letters to the seller of residential real estate.

Brief Description: Concerning real estate broker duties.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Gregerson, Leavitt, Morgan, Vick, Gilday, Rude, Chapman, Barkis and Lekanoff).

Brief History: Passed House: 2/10/22, 95-0.

Committee Activity: Business, Financial Services & Trade: 2/17/22, 2/22/22 [DPA, w/oRec].

Brief Summary of Amended Bill

- Establishes that brokers rendering real estate brokerage services owe statutory duties to all parties in a transaction.
- Requests the Department of Commerce's work group on reducing racial disparities in Washington State homeownership rates to consider the use of certain communications from buyers of residential real estate to sellers and provide recommendations in their report to the Legislature

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: Do pass as amended.

Signed by Senators Mullet, Chair; Dozier, Ranking Member; Brown, Lovick and Wilson, L.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Hasegawa, Vice Chair; Frockt.

Staff: Kellee Gunn (786-7429)

Background: Real Estate Brokers. A real estate broker is anyone who acts on behalf of a real estate firm to perform real estate brokerage services under the supervision of a managing or designated broker. Brokers may represent a buyer, seller, or—in a dual agency relationship—both the buyer and seller if all parties agree in writing. Real estate firms and brokers are licensed in Washington State through the Department of Licensing (DOL).

Duties as a Real Estate Broker. Certain duties apply between an agent and a seller, a seller and a buyer, or in a dual agency relationship, including the duty to:

- exercise reasonable skill and care;
- deal honestly in good faith;
- present all written notices and offers to and from either party in a timely manner;
- disclose all existing material facts known by the broker;
- account for all money and property received in a timely manner;
- provide information on the law of real estate agency at certain points in the sale of real estate;
- disclose in writing to all parties information on who the broker represents to those the broker is providing brokerage services to; and
- make a good faith effort to find a property for a buyer or sell the property for a seller.

These duties cannot be waived. The only duty that can be waived is the duty to make a good faith and continuous effort to seek a buyer for a seller or a seller for a buyer. Under written consent, dual agents are not obligated to seek additional properties to purchase for a buyer or seek additional offers for the seller.

Communication Between Buyers and Sellers of Real Estate. A buyer may, as a tactic to stand out in a difficult real estate market, send a letter to the seller of a property. This type of communication is also known as a real estate "love letter". These letters may reveal personal information about the buyer, such as race, religion, or familial status. In 2020, the National Association of Realtors warned against the use of such letters as the information provided could result in a violation of the Fair Housing Act. In 2021, Oregon became the first state to prohibit the use of such letters.

Homeownership Disparities Work Group. In the 2021-23 Operating Budget, the Legislature tasked the Department of Commerce (Commerce) with convening a diverse homeownership-focused workgroup to “assess perspectives on housing and lending laws, policies, and practices; facilitate discussion among interested parties; and develop budgetary, administrative policy, and legislative recommendations.” Commerce is required to submit a report on their findings, with recommendations, to the Governor and the Legislature by Aug. 1, 2022.

Summary of Amended Bill: Duties as a Real Estate Broker. Regardless of whether a broker is an agent, or what the relationship is between the broker and client, a broker who renders real estate brokerage services owes certain statutory duties to all parties on the disclosure, accuracy, and timeliness of information provided.

Communications From Buyers of Residential Real Estate to Sellers. The Homeownership Disparities Work Group is asked to consider the use of certain communications from buyers of residential real estate to sellers and provide recommendations in their report to the Legislature. The due date to the Legislature for the required report is moved to November 1, 2022.

EFFECT OF BUSINESS, FINANCIAL SERVICES & TRADE COMMITTEE AMENDMENT(S):

- Requests the Department of Commerce's work group on reducing racial disparities in Washington State homeownership rates to consider the use of certain communications from buyers of residential real estate to sellers and provide recommendations in their report to the Legislature.
- Changes the date the housing disparity work group must submit their report to the Legislature from August 1, 2022, to November 1, 2022.
- Amends the title to reflect the changes in the bill.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: I'm a full-time realtor, acting as a principal broker. This is about strengthening real estate broker duties. There are many questions about the way buyers and sellers approach their positions in the sale. Please put the language in again around real estate love letters. There is real concern about bias with people of color and people from the LGBTQ+ community when buying a home. Every day our members represent individuals making the biggest purchase they will make in their lifetimes. This bill will require brokers to provide statutory duties to all parties. The original bill that passed out of the House committee included language prohibiting real estate love letters.

OTHER: Please reinstate the language that prohibited the use of buyer unfair practice letters also known as real estate love letters. This language will ensure that neither the broker for the seller nor the broker for the buyer is at risk of violating fair housing laws.

Many are struggling to find a home to purchase, but solutions should not include letters that may lead to discrimination.

Persons Testifying: PRO: Mary Hull-Drury, Washington Realtors; Jasmyn Jefferson, Windermere Professional Partners.

OTHER: Marley Hochendoner, Northwest Fair Housing Alliance.

Persons Signed In To Testify But Not Testifying: No one.