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**Consumer Protection & Business  
Committee**

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**SSB 5399**

**Brief Description:** Concerning future listing right purchase contracts.

**Sponsors:** Senate Committee on Business, Financial Services, Gaming & Trade (originally sponsored by Senators Mullet and Dozier).

**Brief Summary of Substitute Bill**

- Establishes limits for agreements that obligate an owner of residential real estate to commit to a future real estate listing agreement.
- Makes future listing right purchase contracts subject to the Consumer Protection Act.

**Hearing Date:** 3/15/23

**Staff:** Megan Mulvihill (786-7304).

**Background:**

Agency Relationship.

"Agency relationship" means a written agreement between a real estate firm and a buyer or a seller relating to the performance of real estate brokerage services. Under existing statute, the written agreement between a broker and a buyer or seller is in effect until the earliest of the following:

- completion of performance by the broker;
- expiration of the term agreed upon by the parties;
- termination of the relationship by mutual agreement between the parties; or
- termination of the relationship by notice from either party to the other.

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*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.*

There is no limit under existing statute on how long an agency relationship can last. Nothing in statute precludes an agent from providing a financial incentive in exchange for a future listing right purchase contract, where a seller receives a financial incentive in exchange for providing an agent with the right to list their home at a future date. The length of a future listing right purchase contract can vary, but in some examples the contracts are for 40 years. These contracts are recorded at the county the property is titled in and may run with the property. In the event of foreclosure or if the property owner lists the property with a different real estate broker or by themselves, the property owner may owe a contract termination fee to the real estate broker or firm. The contract termination fee may be a certain percentage of the property's fair market value.

#### Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. A person injured by a violation of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees.

The Attorney General may also bring an action in the name of the State, or on behalf of persons residing in the State, against any person to enjoin violations of the CPA and obtain restitution. The Attorney General may seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

#### **Summary of Bill:**

A future listing right purchase contract is defined as "a contract obligating an owner of residential real estate to enter into a real estate listing agreement in the future relating to the sale of the real estate and includes, but is not limited to, any document recorded in the county where the real estate is located relating to the contract including the contract itself, a memorandum concerning the contract, or a deed of trust to secure the terms of the contract."

A future listing right purchase contract may not exceed two years in duration and may not be renewed or extended. Future listing right purchase contracts are prohibited from running with a property's title and are not binding or enforceable. A future listing right purchase contract may be canceled by the property owner within 10 business days after execution of the contract. The cancellation right must be clearly displayed in bold font in the contract along with notice that the owner may not be compelled to list the property.

A violation of the provisions set forth for future listing right purchase contracts constitutes a per se violation of the Consumer Protection Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.