

HOUSE BILL REPORT

SSB 5840

As Reported by House Committee On:
Housing

Title: An act relating to the acknowledgment of leases.

Brief Description: Concerning leases.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Pedersen and Kuderer).

Brief History:

Committee Activity:

Housing: 2/14/24, 2/19/24 [DP].

Brief Summary of Substitute Bill

- Provides that a conveyance of real estate by a lease under the general real estate statute of frauds does not require acknowledgment, witness, or seal, unless the lease is recorded.
- Provides that a recorded lease requires acknowledgment of the lessee's and lessor's signatures on the lease and memorandum of lease.
- Removes recognition of leases with terms less than one year for year-to-year (periodic) tenancies under the general real estate statute of frauds, and maintains consistency with leases under the Residential Landlord-Tenant statute of frauds.

HOUSE COMMITTEE ON HOUSING

Majority Report: Do pass. Signed by 13 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Bateman, Chopp, Entenman, Hutchins, Low, Reed and Taylor.

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.

Staff: Martha Wehling (786-7067).

Background:

Statute of Frauds.

The statute of frauds is the legal principle that requires certain contracts to be in writing to be enforceable. There are multiple statutes of frauds governing interests in real estate, including tenancies from year-to-year (also known as periodic tenancies), the Residential Landlord-Tenant statute of frauds, the general real estate statute of frauds, and the Manufactured/Mobile Home Landlord-Tenant statute of frauds. These statutes prescribe the formal requirements for creating a valid lease in certain situations.

Leases.

A lease is an encumbrance. Encumbrances on real estate normally must be by deed, and a conveyance of real estate, an interest in real estate, or a contract affecting real estate must be by deed. A deed must be in writing, signed by the party, and acknowledged. An acknowledgment is a formal declaration made in the presence of an authorized officer, such as a notary public, who confirms that the signature is authentic.

Some leases must be in writing and signed by the parties. Tenancies and leases that have terms less than a year are valid without acknowledgment. A lease with a term longer than one year must be in writing and acknowledged. An unacknowledged lease that is longer than one year is effective only as an oral agreement, and results in a month-to-month tenancy.

A tenancy is the possession or occupancy of land under a lease. A lease is the contract which conveys the right for a tenancy to use and occupy property in exchange for rent. A tenancy from year-to-year is a periodic tenancy that automatically renews for a year unless terminated by notice.

Recording.

Leases longer than two years may be recorded in a county's recorder's office. A memorandum of lease is a recordable instrument used to put third parties on notice of an interest-encumbering real property. The memorandum of lease outlines the specific terms of a lease agreement.

Summary of Bill:

The statute of frauds for year-to-year tenancies limits those tenancies in the absence of a written contract, and should not be construed to conflict with the Residential Landlord-Tenant statute of frauds.

A lease under the general real estate statute of frauds does not require acknowledgement,

witness, or a seal. However, when a lease is recorded, the lease and memorandum of lease must have the lessee's and lessor's signatures acknowledged.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Documents that convey an interest in real property must be acknowledged to be recorded. The Washington State Bar Association's Real Estate and Probate Section brought this bill to bring Washington in line with other states. Washington is the rare state that requires commercial leases that are over a year to be acknowledged before a notary. Other states that do not require a notary include New York, California, Idaho, Florida, and Oregon. Many legal documents do not need to be notarized. By eliminating the notary, transactions will be a little easier. When many contracts are signed electronically, and people are in many places, the notary requirement is pretty burdensome. The requirement for acknowledgment is maintained when leases are recorded, although most leases are not recorded. By making acknowledgment explicit for leases that are recorded, it protects the parties that use and rely on public land title records.

If a lease requires acknowledgment, and is perfectly clear and binding, but has not been acknowledged, and rent is paid month-to-month, it becomes a month-to-month tenancy. Someone who is unscrupulous can take advantage of someone who is unsophisticated to get out of the lease. Any other contract in the state for any amount of money, like buying a house or building, is perfectly valid without an acknowledgment. This is a good reform and avoids the situation where one person takes advantage of a technicality to get out of an otherwise binding agreement. The amendment ensures the bill does not conflict with the Residential-Landlord Tenant Act.

(Opposed) None.

Persons Testifying: Senator Mike Padden, prime sponsor; Tim Osborn, Washington State Bar Association Real Property Probate and Trust Section; and Sean Holland, Washington Land Title Association.

Persons Signed In To Testify But Not Testifying: None.