

SENATE BILL 5232

State of Washington 52nd Legislature 1991 Regular Session

By Senators West, Gaspard, von Reichbauer and Johnson.

Read first time January 24, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to withheld real estate brokerage commissions; and
2 adding new sections to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** As used in sections 2 through 9 of this
5 act, "closing agent" means any escrow agent, attorney, lender, real
6 estate broker, or other person who closes a real estate or business
7 opportunity transaction.

8 NEW SECTION. **Sec. 2.** A closing agent shall continue to hold in
9 trust, following the closing of a real estate or business opportunity
10 transaction, the amount of money demanded by a real estate broker, less
11 any amounts held in trust by the broker as of closing, as a commission
12 when: (1) The closing agent receives from the demanding broker at the
13 office where the closing is to occur a notice of demand in conformance
14 with the requirements of section 5 of this act; (2) the notice is

1 received by the closing agent prior to closing; and (3) the written
2 closing instructions of the principal from whom demand is made do not
3 require the closing agent to pay the broker the amount demanded by the
4 broker in the notice of demand as required by section 6(1) of this act.

5 NEW SECTION. **Sec. 3.** The broker making the demand under section
6 5 of this act warrants that there is a written agreement which provides
7 for payment of a commission to the demanding broker on the subject
8 transaction.

9 NEW SECTION. **Sec. 4.** A broker may make demand only for the
10 broker's share of the commission, as such share is provided for in the
11 written agreement referred to in section 3 of this act.

12 NEW SECTION. **Sec. 5.** The notice of demand required in section 2
13 of this act shall be in substantially the following form:

14 _____

15 NOTICE OF DEMAND FOR REAL ESTATE COMMISSION

16 To: _____
17 (Name of closing agent)

18 Re: _____
19 (Seller(s))

20 _____
21 (Buyer(s))

22 Escrow Number: _____

23 Address: _____

24 _____

25 Legal Description: _____

26 _____

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The undersigned real estate broker declares under penalty of
perjury that he or she has earned a commission based on a
written agreement signed by _____ (a principal in the
above-referenced transaction). Under the terms of that
agreement, the principal agreed to pay broker a commission in
the amount of \$ _____.

8

Demand is hereby made that broker be paid the commission in the
above amount, less any amounts held in trust by the broker as
of closing, in cash at closing of the above transaction, or as
follows:

12

13

14

Date: _____

15

(Name of broker)

16

(Signature of broker/agent)

17

(Name of brokerage firm)

18

(Address of brokerage firm)

19

20

(Phone number)

21

22

23

NEW SECTION. **Sec. 6.** A closing agent in a transaction described
in section 2 of this act shall disburse the demanded commission only
under one of the following conditions:

26

(1) The closing agent receives written instructions signed by the
principal from whom demand is made authorizing the closing agent to
disburse the commission to the demanding broker; or

27

28

1 (2) A court of competent jurisdiction or arbitrator agreed to by
2 the principal, closing agent, and broker, orders the closing agent to
3 disburse the funds.

4 NEW SECTION. **Sec. 7.** If either written instructions pursuant to
5 section 6(1) of this act or a court order or arbitrator's order
6 pursuant to section 6(2) of this act is not received by the closing
7 agent prior to or within thirty days after the closing date, the
8 closing agent shall file an interpleader action with a court of
9 competent jurisdiction and deposit the demanded funds with the court.
10 The broker making the demand shall pay the closing agent's reasonable
11 costs and attorneys' fees for the filing of the interpleader action not
12 to exceed two hundred fifty dollars.

13 NEW SECTION. **Sec. 8.** The prevailing party shall be entitled to
14 reasonable attorneys' fees and costs in any interpleader action filed
15 under section 7 of this act. Furthermore, if the broker is the
16 prevailing party, the court shall also award reimbursement to the
17 broker for the fees and costs paid pursuant to section 7 of this act.

18 NEW SECTION. **Sec. 9.** A closing agent is not liable for failing
19 to comply with sections 1 through 8 of this act, if the closing agent
20 made a good faith effort to substantially comply with sections 1
21 through 8 of this act.

22 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act are
23 each added to Title 64 RCW.