

HOUSE BILL REPORT

HB 2778

As Reported by House Committee On:

Commerce & Labor

Appropriations

Title: An act relating to real estate licensure law.

Brief Description: Modifying provisions concerning real estate licensure law.

Sponsors: Representatives Conway, Wood, Condotta, Chandler and Williams.

Brief History:

Committee Activity:

Commerce & Labor: 1/25/08, 1/29/08 [DPS];

Appropriations: 2/6/08, 2/8/08 [DPS(CL)].

Brief Summary of Substitute Bill

- Establishes licenses for real estate brokers, managing brokers, designated brokers, and firms, replacing the existing licenses for real estate salespersons and associate brokers.
- Adds several exemptions to real estate licensing.
- Increases licensing and educational requirements for real estate licensees.
- Increases supervision and oversight over new licensees by more experienced licensees.
- Makes various grammatical and clarifying changes.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Chandler, Assistant Ranking Minority Member; Crouse, Green, Moeller and Williams.

Staff: Alison Hellberg (786-7152).

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

Background:

A real estate broker, associate broker, or salesperson is required to obtain a license from the Department of Licensing (Department). To receive a license, an individual must meet certain requirements, including passing the license examination established by the Washington Real Estate Commission and having minimum amounts of training. To receive a broker's license, the applicant must have at least two years of experience as a salesperson.

A real estate broker is a person who:

- sells, lists, or buys real estate for others;
- negotiates for others the purchase, sale, exchange, lease, or rental of real estate, business opportunities, or a manufactured home in conjunction with the land on which the home is located;
- advertises or holds himself or herself out to the public as engaged in these activities; or
- engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results in these activities.

A real estate salesperson is employed by a real estate broker in conducting the real estate business. An associate real estate broker is a person who has qualified as a broker, but who works with another broker and has a license stating that he or she is associated with another broker.

These licensing requirements do not apply to:

- persons who purchase property and/or a business opportunity for his or her own account;
- attorneys;
- receivers, trustees in bankruptcy, executors, administrators, or others acting under the order of any court;
- owners of rental or lease property;
- persons who manage residential property; and
- persons who own or manage a self-service storage facility.

Summary of Substitute Bill:

Persons engaged in real estate brokerage services are subject to licensing by the Department. The licensees consist of real estate brokers, managing brokers, designated brokers, and real estate firms, which replaces the Department's previous licensing structure of real estate salespersons, associate brokers, and brokers.

Real estate brokerage services include the following services rendered for compensation:

- listing, selling, purchasing, exchanging, optioning, leasing, or renting of real estate;
- negotiating, or offering to negotiate, the purchase, sale, exchange, lease, or rental of real estate;

- listing, selling, purchasing, exchanging, optioning, leasing, renting, or negotiating, or offering to negotiate, the purchase, sale, exchange, lease, or rental of a manufactured or mobile home or the land where the home will be located;
- advertising or holding oneself out to the public as engaged in real estate brokerage services;
- advising, counseling, or consulting in connection with a real estate transaction; and
- issuing a broker's price opinion.

Several exemptions from licensing are added. Employees of governmental entities involved in an acquisition of property for right-of-way or eminent domain are exempt. Persons providing referrals to licensees whose compensation is not contingent upon receipt of compensation from licensees or the real estate firm are also exempt. If they do not promote the purchase, listing, sale, exchange, optioning, leasing, or renting of a specific property interest, certified public accountants, title or escrow agents, and investment counselors are exempt. A person employed by an owner or on behalf of a designated or managing broker is exempt if the person's activities in property management are limited.

There are four types of licensees under the licensing structure. Each type of licensee has different licensing requirements and professional responsibilities.

- ***Broker***

The broker is converted into the entry level licensee. To be licensed, a broker must complete 90 hours of instruction and pass a broker's licensing examination. To renew a license, a broker must pay a renewal fee and complete an additional 90 hours of instruction. A broker is only licensed to one firm and is supervised by managing and designated brokers. Prompt delivery to managing brokers of required records and complete copies of transactions is required. During the first two years of a broker's licensure, a managing broker must provide a heightened level of supervision.

- ***Managing Broker***

Managing brokers must have a minimum of three years of experience as a real estate broker. Applicants for managing broker licenses must complete an additional 90 hours of instruction within three years of applying for the managing broker's license, pass a course examination, and pass the managing broker's license examination. A managing broker may only be licensed to one firm at a time and has supervisory and oversight responsibilities over brokers. Prompt delivery to designated brokers of required records and complete copies of transactions is required.

- ***Designated Broker***

A designated broker has authority to act for the firm. A designated broker either owns a sole proprietorship real estate firm or has a controlling interest in a real estate firm. To act as the designated broker in a firm, a designated broker must hold a license as a managing broker and must receive an endorsement from the Department. A designated broker may act as a designated broker for more than one firm.

A designated broker may, by written agreement, delegate responsibility over client funds and trust account records to a managing partner. The designated broker must, however, maintain a record of the firm's managing brokers and the delegations.

- ***Real Estate Firm***

Real estate firms must also be licensed. In order to receive a license, a firm must designate a managing broker to act as the designated broker and must supply the Department with all those who have a controlling interest in the firm. The Department may not license a firm where a person with a controlling interest has been subject to a suspension or revocation of a real estate license. The firm must maintain and produce records as required by the Department.

Other Licensing and Educational Requirements

In addition to the specific license requirements, applicants for a license must complete a fingerprint-based background check through the Washington State Patrol. If licensees are employed with the Department, their licenses are placed on inactive status. If a licensee is employed by a local government and conducting real estate transactions on behalf of the government, his or her managing and designated brokers are not responsible for real estate transactions on behalf of his or her employer. Reciprocity may only be granted to persons with licenses deemed equivalent to licenses held by Washington licensees.

In addition to increases in educational requirements, the Department is authorized to take disciplinary action against real estate school administrators and instructors based upon conduct, acts, or conditions prescribed by rule. The Real Estate Commission may also approve examination locations in foreign jurisdictions.

Trust Accounts

If a licensee exercises control over real estate transaction funds, those funds are considered trust funds. Firms must keep real estate trust fund accounts in a recognized Washington depository. Licensees must keep trust funds separate from their own funds. If transactions concerning a purchase and sale agreement that instructs the broker to deliver the earnest money check directly to a named closing agent or the seller, a firm is not required to maintain a trust fund account. Brokers must deposit all funds into their firm's trust bank account the next banking day following receipt of the funds unless the purchase and sale agreement provides for deferred delivery.

Various grammatical corrections and clarifying language changes are made. Sections are repealed related to licenses that no longer exist, temporary permits, multiple listing associations, and land development representatives.

Substitute Bill Compared to Original Bill:

Those assisting in the performance of property management functions by carrying out financial tasks are exempt from real estate licensing. The definition of "broker's price opinion" is clarified to explicitly state that a broker's price opinion is not an appraisal unless it meets the requirements for an appraisal under the Certified Real Estate Appraiser Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony:

(In support) This bill is a result of four years of work. A group representing many elements of the real estate industry began working on this issue in 2004. This is a consensus bill. At the beginning of the process, the participants decided that there were no sacred cows and everything was up for discussion. There were numerous internal and external stakeholder discussions, especially in the area of exemptions. Those acting in the capacity of the owner in property management are exempt and should be.

The real estate industry has changed dramatically over the years. The licensing laws have been updated in a piecemeal fashion, but the licensing laws had not really been looked at as a whole for years. The new categories of licensees are more descriptive of what licensees do – they broker real estate transactions.

The bill is really about consumer protection. Consumers will be better protected with more knowledgeable licensees. All levels of licensees need to have enough training and education to understand the law and be able to educate consumers. All transaction documents of entry level licensees will be reviewed. The increased education requirements are nominal, but essential.

There has been a phenomenal growth in new licensees. They enter the profession with little education and no supervision. This bill changes that. It will also prevent people from leaving the industry in the early years because they will be properly trained and supervised as well as provide consumer protection.

(In support if amended) There is something in the bill that needs to be added. The bill does not include language preventing pressure on appraisers by real estate brokers. Provisions relating to appraisers and mortgage brokers should be brought into the real estate licensing laws to address this issue. The definition for "broker's price opinion" should include specific language clearly stating that these are not appraisals. Real estate licensees should understand that they are prohibited from putting pressure on appraisers. This should especially be considered in light of the recent subprime crisis. At issue in that crisis were fraudulent appraisers.

(Opposed) None.

Persons Testifying: (In support) Bob Mitchell and Bill Riley, Washington Realtors; and Donald Arsenaault, Arsenaault Realty Advisors, LLC.

(In support if amended) Jim Irish, Appraisers' Coalition of Washington and National Association of Independent Fee Appraisers; and Sheridan Shaffer, Appraisers' Coalition of Washington and Seattle Chapter of Appraisal Institute.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Green, Haigh, Hinkle, Hunt, Kagi, Kessler, Kretz, Linville, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony:

This bill is a result of a two year effort to evaluate and assess every portion of the real estate license law to ensure the law is current, necessary, and reflects the current standards of practice. From a public safety standpoint it is important that candidates for licensure should have a state and federal background check.

Persons Testifying: Bob Mitchell, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.