

SENATE BILL REPORT

SSB 6514

As Passed Senate, February 18, 2008

Title: An act relating to identification of real property.

Brief Description: Regarding identifying real property.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Tom, McCaslin and Kline).

Brief History:

Committee Activity: Judiciary: 1/29/08, 2/01/08 [DPS].

Passed Senate: 2/18/08, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6514 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott, Roach and Weinstein.

Staff: Robert Kay (786-7405)

Background: The Statute of Frauds is an English statute enacted in 1677 declaring certain contracts judicially unenforceable if they are not committed to writing and signed by the party against whom enforcement is sought. Washington's version of the English Statute of Frauds applies to every contract for a conveyance of real estate or that creates an encumbrance upon real estate, and can be found in RCW 64.04.010 and 64.04.020.

Washington's statute of frauds is silent as to whether real estate contracts must contain a particular type of description of the property. The Washington Supreme Court (Court) has held - since its 1949 decision in *Martin v. Seigel*, a case involving a real estate purchase-and-sale contract - that in contracts involving real estate, the application of Washington's statute of frauds requires that the contract include a description of the property sufficiently definite to locate it without recourse to oral testimony - what is referred to as a "legal description" of the property.

The Court created an exception to its rule in *Martin* in another 1949 case also involving a purchase-and-sale contract, *Edwards v. Meader*. In *Edwards*, the Court held that, although a real estate purchase-and-sale contract did not contain a legal description of the property, if it contained an express provision that specifically authorized the real estate broker involved in the transaction to fill in the legal description of the property later, after the signing of the

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contract by the parties, the purchase-and-sale contract would satisfy Washington's statute of frauds.

In 1951, in *Bingham v. Sherfey*, a case involving a real estate option-to-purchase contract, the Court created another exception to the requirement when it held that, in a contract involving real estate, where the contract did not contain a complete legal description of the property, a reference in the contract to another written instrument that did include such a legal description would satisfy Washington's statute of frauds. In *Bingham*, the option-to-purchase contract referred to the property by a "tax lot" number, corresponding to a tax assessment record in the county assessor's office. The Court held that this reference to the property's tax record at the assessor's office was sufficient because the assessor's document would itself contain a legal description of the property.

The rule and exceptions of *Martin*, *Bingham*, and *Edwards* remain the case law today. While these cases involved two types of executory real estate contracts - a purchase-and-sale contract and an option-to-purchase contract, one can infer from the opinions in these cases that the rule and exceptions regarding legal description apply generally to all contracts or agreements involving real estate which are by statute or case law subject to the requirements of the state's statute of frauds.

Concern has arisen regarding a significant amount of lawsuits involving real estate purchase-and-sale contracts - which are executory and not recorded at the county auditor's office - where one party seeks to avoid the obligations of the contract with a claim that the contract does not contain a legal description of the property. County tax assessors have developed systems of identifying parcels of land by a tax identification number. The record in the county assessor's office corresponding to the identification number of a parcel of real property can be used - either directly or as a reference to the complete record in the county auditor's or recorder's office - to obtain a legal description of the property.

Summary of Substitute Bill: The requirement of the Washington statute of frauds, RCW 64.04.010 and 64.04.020, that a contract involving real estate contain a legal description of the real property, is met when applied to written agreements for the purchase and sale, or option to purchase, real estate, where the written agreement contains a description of the real property using the county assessor's tax parcel number for that property, and a designation of the county in which the property is located. The legislation would codify existing case law in *Bingham v. Sherfey* with regard to description of property in written agreements for the purchase and sale, and option to purchase, real estate.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: The Washington Insurance Commissioner has ruled that title insurance companies doing business in Washington cannot collect a cancellation fee over \$25 if they provide preliminary research information about real estate that contains a formal legal description of a parcel of property to a broker before a

buyer has signed a purchase-and-sale agreement and subsequently no title insurance regarding the parcel is purchased by any buyer. As a result, title insurance companies are now demanding that a purchase-and-sale agreement be executed by a buyer before it will agree to provide the legal description of the subject property. A further consequence of this is that real estate brokers are thus unable to include a formal legal description of a property which is the subject of a purchase-and-sale agreement at the time the agreement is executed. This has resulted in litigation to avoid obligations to buy or sell in executory purchase-and-sale agreements through claims that no formal legal description was included in the agreement, thus making the agreement unenforceable under the statute of frauds. In many cases the buyer or seller attempting to avoid the obligation to perform often has a motive unrelated to the accuracy of the description of the property in the agreement.

Courts are holding purchase-and-sale agreements to be unenforceable because they are violative of the statute of frauds where the formal legal description was not included in the purchase-and-sale agreement when the agreement is signed by the parties. Brokers are able to obtain tax parcel numbers to include in purchase-and-sale agreements at the time of execution. From the tax parcel number, much information can be obtained online about the parcel of property associated with the number, more than can be obtained from the legal description. For written purchase-and-sale agreements the Legislature should allow an exception to the requirement of the statute of frauds that a written contract for the conveyance of real estate include a formal legal description of the real estate. Inclusion of the tax parcel number of the subject real estate should suffice in order to satisfy the statute of frauds. Buyers are adequately protected against misunderstanding about the nature and extent of the property they are bound to purchase after execution of a purchase-and-sale agreement containing only a tax parcel number as description of the property because the final obligation to perform, as stated in the forms used for purchase-and-sale agreements by brokers in Washington, is conditioned upon the buyers review of the formal legal description of the property before closing.

CON: Buyers are not adequately informed about the nature and extent of the property that they are buying when executing a purchase-and-sale agreement if a tax parcel number is the only identification of the property in the agreement. It is not clear that the form for purchase-and-sale agreements used by Washington brokers contain provisions that adequately protect buyers against misunderstanding the nature and extent of the subject property at the time of execution of the agreement, where the only description of the property in the agreement is a tax parcel number. Further protection of the buyer is necessary where the only description of the property in the agreement is the tax parcel number.

Persons Testifying: PRO: Annette Fitzsimmons, Washington Realtors Association.

CON: Carrie Tellefson, Fidelity National Financial; Jean McCoy, Real Property, Probate, and Trust Section, Washington State Bar Association.