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**SENATE BILL 5399**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Mullet and Dozier

AN ACT Relating to future listing right purchase contracts; amending RCW 18.86.010 and 18.86.070; adding a new section to chapter 18.86 RCW; and declaring an emergency.

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

**Sec.**  RCW 18.86.010 and 2013 c 58 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a real estate firm and a buyer and/or seller relating to the performance of real estate brokerage services.

(2) "Agent" means a broker who has entered into an agency relationship with a buyer or seller.

(3) "Broker" means broker, managing broker, and designated broker, collectively, as defined in chapter 18.85 RCW, unless the context requires the terms to be considered separately.

(4) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof when the transaction or business includes an interest in real property.

(5) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(6) "Buyer's agent" means a broker who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(7) "Confidential information" means information from or concerning a principal of a broker that:

(a) Was acquired by the broker during the course of an agency relationship with the principal;

(b) The principal reasonably expects to be kept confidential;

(c) The principal has not disclosed or authorized to be disclosed to third parties;

(d) Would, if disclosed, operate to the detriment of the principal; and

(e) The principal personally would not be obligated to disclose to the other party.

(8) "Contract purchase price" means the amount of moneys paid to the seller as consideration for entering into a future listing right purchase contract.

(9) "Dual agent" means a broker who has entered into an agency relationship with both the buyer and seller in the same transaction.

((~~(9)~~)) (10) "Future listing right purchase contract" means a contractual right to obligating a seller to enter into a real estate listing agreement with a purchasing company in the future relating to the sale of a residential home, townhouse, or condominium.

(11) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang‑related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

((~~(10)~~)) (12) "Principal" means a buyer or a seller who has entered into an agency relationship with a broker.

((~~(11)~~)) (13) "Purchase date" means the date on which the contract purchase price is transferred to the seller by the company either by personal delivery or via wire, ACH, or other electronic means, or mailed by insured, certified, or registered United States mail.

(14) "Purchasing company" or "company" means a person or entity that enters into a future listing right purchase contract.

(15) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

((~~(12)~~)) (16) "Real estate firm" or "firm" have the same meaning as defined in chapter 18.85 RCW.

((~~(13)~~)) (17) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

((~~(14)~~)) (18) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

((~~(15)~~)) (19) "Seller's agent" means a broker who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

((~~(16)~~)) (20) "Subagent" means a broker who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the broker in writing to appoint subagents.

**Sec.**  RCW 18.86.070 and 2013 c 58 s 8 are each amended to read as follows:

(1) The agency relationships set forth in this chapter commence at the time that the broker undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

(a) Completion of performance by the broker;

(b) Expiration of the term agreed upon by the parties;

(c) Termination of the relationship by mutual agreement of the parties; or

(d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) No future listing right purchase contract shall have a term greater than five years from the purchase date.

(3) Except as otherwise agreed to in writing, a broker owes no further duty after termination of the agency relationship, other than the duties of:

(a) Accounting for all moneys and property received during the relationship; and

(b) Not disclosing confidential information.

NEW SECTION. **Sec.**  A new section is added to chapter 18.86 RCW to read as follows:

A future listing right purchase contract may act as a lien on the property to which it relates and may be perfected by recording in the same manner that an easement, mortgage, or other interest in real property is recorded. All liens shall take priority by normal operation of law. Notwithstanding the foregoing, any such lien shall be subordinate to a financing, refinancing, or home equity line of credit the seller should seek subsequent to the effective date of the future listing right purchase contract.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**