

HOUSE BILL REPORT

SSB 5399

As Passed House - Amended:

April 6, 2023

Title: An act relating to future listing right purchase contracts.

Brief Description: Concerning future listing right purchase contracts.

Sponsors: Senate Committee on Business, Financial Services, Gaming & Trade (originally sponsored by Senators Mullet and Dozier).

Brief History:

Committee Activity:

Consumer Protection & Business: 3/15/23, 3/24/23 [DPA].

Floor Activity:

Passed House: 4/6/23, 98-0.

Brief Summary of Substitute Bill (As Amended by House)

- Establishes limits for agreements that obligate an owner of residential real estate to commit to a future real estate listing agreement.
- Makes future listing right purchase contracts subject to the Consumer Protection Act.
- Requires the Washington Real Estate Commission to convene a work group to examine the practices regarding future listing right purchase contracts.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass as amended. Signed by 13 members: Representatives Walen, Chair; Reeves, Vice Chair; Corry, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Cheney, Connors, Donaghy, Hackney, Ryu, Sandlin,

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.

Santos and Volz.

Staff: Megan Mulvihill (786-7304).

Background:

Agency Relationship.

"Agency relationship" means a written agreement between a real estate firm and a buyer or a seller relating to the performance of real estate brokerage services. Under existing statute, the written agreement between a broker and a buyer or seller is in effect until the earliest of the following:

- completion of performance by the broker;
- expiration of the term agreed upon by the parties;
- termination of the relationship by mutual agreement between the parties; or
- termination of the relationship by notice from either party to the other.

There is no limit under existing statute on how long an agency relationship can last. Nothing in statute precludes an agent from providing a financial incentive in exchange for a future listing right purchase contract, where a seller receives a financial incentive in exchange for providing an agent with the right to list their home at a future date. The length of a future listing right purchase contract can vary, but in some examples the contracts are for 40 years. These contracts are recorded at the county the property is titled in and may run with the property. In the event of foreclosure or if the property owner lists the property with a different real estate broker or by themselves, the property owner may owe a contract termination fee to the real estate broker or firm. The contract termination fee may be a certain percentage of the property's fair market value.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. A person injured by a violation of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees.

The Attorney General may also bring an action in the name of the State, or on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The Attorney General may seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Summary of Amended Bill:

A future listing right purchase contract is defined as "a contract granting an exclusive right to list residential real estate for sale in the future and includes, but is not limited to, any document recorded in the county where the real estate is located relating to the contract

including the contract itself, a memorandum concerning the contract, or a deed of trust to secure the terms of the contract."

A future listing right purchase contract may not exceed five years in duration and may not be renewed or extended. Future listing right purchase contracts are prohibited from being used as a lien against real property, from running with a property's title, and are not binding or enforceable. A future listing right purchase contract may be canceled by the property owner within 10 business days after execution of the contract. The cancellation right must be clearly displayed in bold font in the contract along with notice that the owner may not be compelled to list the property.

The Washington Real Estate Commission (Commission) must convene a work group, staffed by the Department of Licensing, to examine practices by real estate brokerage companies to market, establish, and enforce future listing right purchase contracts in order to provide recommendations for consumer protections and potential regulations. The work group must include representatives from associations representing real estate brokers, real estate brokerage companies who offer future listing right purchase contracts, and other entities that the Commission deems appropriate. The Commission must report back to the Legislature by December 1, 2024, with findings and recommendations.

A violation of the provisions set forth for future listing right purchase contracts constitutes a per se violation of the CPA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) There are only two companies engaging in future listing right purchase contracts. The simple premise is that a homeowner gets offered \$1,500 to agree to use a certain broker for the next 40 years. This is not an illegal practice, but a new practice that has emerged. The end result is consumer dissatisfaction. These individuals go to refinance their home and realize the bank will not refinance with this contract attached to the title. These contracts are also a problem when someone passes away. A beneficiary may not know that the person who passed signed this contract, and they sell the house, but now they are in violation of the contract and have to write a check to satisfy the contract. An example includes a realtor being sent to an individual's house to sign a contract the day after he got out of the hospital. He was on a significant amount of pain medication. After he died, the house sold for \$533,000, but because it was not sold through the realty company with the contract, the beneficiaries had to pay that realtor commission even though the realtor did not work to sell the home. The realty company did their own appraisal, which said the home

was worth \$775,000, and then charged 3 percent commission on the \$775,000 per the contract.

In 2022, 750 of these contracts were recorded in Washington. An alternative name for these contracts used by the American Title Association is nontitle recorded agreements for personal services. These are purely personal service contracts and do not belong on a title. The bill provides two important protections by limiting the contracts to two years and prohibiting the contracts from running with the title or land, which means they are not enforceable against future owners and lenders.

Most realtors have never heard of this practice and would never recommend a client sign a contract like this. The real estate market goes through cycles, but this practice locks consumers in to a percent and essentially causes them to waive their right to negotiate commission rates. It is concerning that these companies are using the Realtors Property Resource model to determine a home's valuation because the website states that it is a tool to find an approximate value and should not be used as an appraisal. The attorney generals of four states have filed lawsuits against one of the companies who participates in this practice, alleging the contracts are unfair and deceptive. Utah has already banned this practice. These companies exploit families and deprive them of profits they would earn from selling their home. Protect Washington consumers and prevent misuse of the land title recording system.

(Opposed) There are misunderstandings about these contracts. There are people in difficult situations who need fast cash, and these agreements help them. These companies can help people who need to refinance by lifting the lien and then reattaching it afterwards. The transactions work great and brokers perform all of the necessary services. Sometimes the homeowner may decide after they have taken the money that they are not happy with the agreement and lose sight of long-term goals. The realtors explain the contract thoroughly and sometimes when people understand it is a 40 year contract, they pull out. The 40 years is used to establish a relationship with people throughout their lives. These contracts work out 9 times out of 10. Instead of thinking about these contracts as loans, think of them as discount brokerage services. In this case, the discount is given before the transaction happens, sometimes several years before. A realtor spends the vast majority of their time marketing and trying to earn clients. These contracts make the process more efficient by securing the client before the sale, and in return the client receives a discount.

Persons Testifying: (In support) Senator Mark Mullet, prime sponsor; Sean Holland, Washington Land Title Association; Allan McPherson; and Nathan Gorton, Washington Realtors.

(Opposed) Amit Mital; and Denise Swanson and Glenn Roland, MV Realty.

Persons Signed In To Testify But Not Testifying: None.