

SENATE BILL REPORT

SSB 5840

As Passed Senate, February 2, 2024

Title: An act relating to the acknowledgment of leases.

Brief Description: Concerning leases.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Pedersen and Kuderer).

Brief History:

Committee Activity: Law & Justice: 1/11/24, 1/18/24 [DPS].

Floor Activity: Passed Senate: 2/2/24, 49-0.

Brief Summary of First Substitute Bill

- Provides that leases do not require acknowledgement, witnesses, or seals.
- Provides that leases or memorandums of leases require acknowledgement of a lessee's and lessor's signatures to be recorded.
- Clarifies that changes to the general statutes of frauds governing tenancies does not conflict with or supersede the statute of frauds requirements for leases under the Residential-Landlord Tenant Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5840 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

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.

Background: Statute of Frauds. Washington's statute of frauds declares certain contracts judicially unenforceable if such contracts are not in writing. The statute of frauds applies to every contract for a conveyance of real estate or every contract that creates an encumbrance upon real estate.

The statute of frauds generally applies to year-to-year tenancies and requires such leases be in writing. Tenancies with a duration of more than one year must also be acknowledged. Residential tenancies are generally governed by a separate statute of frauds under the Residential-Landlord Tenant Act.

Acknowledgement. Deeds, mortgages, and other instruments in writing required to be acknowledged must be acknowledged before authorized persons, such as notaries. An authorized person, by certificate of acknowledgment, certifies the person is known to the authorized person as the one who signed the instrument in the presence of the authorized person on the date stated, and the person signed freely and voluntarily. An authorized person certifies the acknowledgment by signature and official seal.

Recording. A lease for more than two years may be recorded in the county's recorder's office.

A memorandum of lease is a recordable instrument used to put third parties on notice of a lease interest encumbering real property. The memorandum of lease outlines the specific terms of a lease agreement.

Summary of First Substitute Bill: Leases do not require acknowledgment, witnesses, or seals. Lease requirements under the Residential-Landlord Tenant Act remain unchanged and unaffected. To be recorded, leases or memorandums of a lease must have the lessee's and lessor's signatures acknowledged.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Most states do not require a notary on leases with terms of more than one year. Washington is one of very few states that requires acknowledgment before a notary for such leases. Requiring paper leases be notarized is a burden when no other contracts in this state has this requirement. This requirement has been used by lessees to unjustly get out of such leases. A lease could be perfectly valid, written, and agreed, but if the lease is not acknowledged as required and if

rent is paid monthly, it becomes a month-to-month lease and terminable at a moment's notice. This bill would maintain the acknowledgment requirement for leases or memorandums of leases that will be recorded and will protect parties using the public land title records. This is a technical, clean-up bill that would benefit our citizens, bring Washington into alignment with the rest of the country, and avoids potential abuse.

CON: A tenant who wants to open a little business is more likely to not understand that they are making a long-term commitment. Recording is required if a lease is two years or longer, but a lot of these leases contain specific terms that prevent the lease from being recorded. Tenants may be in really difficult financial situations because they have signed a lease for five or ten years and there is no way for them to work out issues with their landlords. Eliminating the requirement for acknowledgment of leases is not going to lead to tenant protections. Having a notary acknowledge the lease puts an unsophisticated tenant on notice that there is something important going on. There are no particular benefits for either commercial or residential tenants in allowing a landlord to lock them into a long-term lease without an indication that the tenant understands what they are signing up for.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Tim Osborn, WSBA Real Property Probate & Trust Section; JP Kissling, Washington Land Title Association.

CON: Elizabeth Powell, N/A.

Persons Signed In To Testify But Not Testifying: No one.