

HOUSE BILL REPORT

SSB 6498

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: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senator Tom).

Brief History:

Committee Activity:

Commerce & Labor: 2/26/08 [DP];

Appropriations: 3/1/08 [DP].

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, educational, and oversight requirements for real estate licensees.
- Makes various grammatical and clarifying changes.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; 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 state 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 Bill:

Persons engaged in real estate brokerage services are subject to licensing by the Department. The licensing structure of these licensees consists 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, which include:

- employees of governmental entities involved in an acquisition of property for right-of-way or eminent domain actions;
- persons providing referrals to licensees who do not perform other real estate brokerage services;
- certified public accountants and investment counselors who do not engage in real estate brokerage services;
- title and escrow companies, escrow agents, closing attorneys, or financial institutions acting as escrow agents who do not perform real estate brokerage services; and
- employees of managing or designated brokers or employees of individual property owners who perform limited property management duties.

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 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.

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. In 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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The real estate licensing laws have not been revisited for many years. This bill is about increasing education and oversight for licensees, which is very important. For most people, real estate is the most important asset they will ever own. Having educated professionals work in this area is important to safeguard these assets. This bill gives the Department of Licensing more oversight over distance learning, which is very important as the clock hour requirements increase.

This is the product of two years of work with those within the industry and the regulators. The process also involved extensive stakeholder work, especially in the area of exemptions. The substitute bill reflects changes made to the definition of "broker's price opinion" to show that they are not conducted under the same requirements as appraisals, which are regulated in a different part of the code.

(Concerns) The changes to the definition of "broker's price opinion" are appreciated. The issue that is not addressed, however, is pressure put on appraisers. This pressure led to the recent subprime crisis and it also caused the commercial loan crisis in the 1980s. Language from Chapter 19.46 RCW should be added to this bill. Appropriate language to describe pressure and acts that real estate licensees should not do can be found in rules adopted by the Department of Financial Institutions. The integrity of appraisals must be protected.

(Opposed) It is a step backwards to limit the use of distance education. The State of Alabama did a study on distance versus live education, and distance education outscored live education in terms of effectiveness. People can take more time with distance education and go over concepts they do not understand a second time.

Persons Testifying: (In support) Senator Tom, prime sponsor; and Bob Mitchell, Washington Realtors.

(Concerns) Jim Irish, Appraisers Coalition of Washington.

(Opposed) Don Gorman, Tape Ed Real Estate School.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 34 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McDonald, 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: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony:

This is an important bill for the real estate industry and consumers. The Real Estate Program at the Department of Licensing has not been asking for criminal background checks and fingerprinting. This is a public safety issue; please support this bill.

Persons Testifying: Bob Mitchell, Washington Realtors

Persons Signed In To Testify But Not Testifying: None.