

SENATE BILL REPORT

SB 6457

As of February 6, 2018

Title: An act relating to actions arising out of real estate appraisal activity.

Brief Description: Limiting actions against real estate appraisers.

Sponsors: Senator Conway.

Brief History:

Committee Activity: Labor & Commerce: 2/01/18.

Brief Summary of Bill

- Limits actions against a real estate appraiser to one year from the date of discovery and no later than three years after the report date, and only by the client or other intended user of the report.
- Changes the process from cancelling a license for failing to pay the license fees within one year after expiration, to placing the license on inactive status for failing to renew within one year after expiration.
- Authorizes a person on inactive status to apply for reinstatement by paying a fee and meeting other requirements.
- Allows a person applying for reinstatement for certain appraiser positions to apply to work as a trainee.
- Requires the Department of Licensing (DOL) to cancel a license if not renewed or reinstated within five years of expiring.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Statutes of Limitations. Washington law provides various statutes of limitations. For example, an action based on an oral contract must be commenced within three years. An action based on a written contract must be commenced within six years. Actions for relief not otherwise provided in statute must be commenced within two years after the cause of action accrues.

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.

Claims generally accrue for statute of limitation purposes when the harm or damage occurs, regardless of whether the plaintiff had knowledge of his or her rights. However, under the discovery rule, causes of action accrue when a plaintiff knows or, through the exercise of due diligence should know the factual, but not necessarily legal, basis for the cause of action.

Negligence Claims. A real estate appraiser may be liable to third parties for financial loss they incur in reliance on a negligently prepared appraisal report, but such liability extends only to a limited class of plaintiffs. Washington law has generally followed the Restatement of Torts for negligent misrepresentation.

Washington Certified Real Estate Appraiser Act (Act). Real estate appraisers estimate the value of real property. Under the Act, the DOL certifies and licenses real estate appraisers. The Act prohibits a person from receiving compensation for appraisal services unless certified or licensed by the state.

Types of Credentials. The Act authorizes four types of credentials issued to real estate appraisers, from highest to lowest credentialing requirements:

- state-licensed real estate appraiser;
- state-certified residential real estate appraiser;
- state-certified general real estate appraiser; and
- state-registered appraiser trainee.

Each level of licensing and certification authorizes certain types of appraisal work and allowable transaction values. State-registered trainees may only work under the direct supervision of state-certified real estate appraisers.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Statutes of Limitations. Any action to recover damages against a real estate appraiser arising out of the appraiser's real estate activity must be brought within one year from the date of discovery of the act or omission giving rise to the action, but not more than three years after the report date. An appraisal report or appraisal review report, including any data, work papers, opinion of market value, certification, and statement is considered prepared at the request of and exclusively for the benefit of the client and intended user, and for the intended use specified in the appraisal report or appraisal review report. An appraiser is not liable for any action to any person or entity other than the client or intended user. An appraiser is only subject to disciplinary action stemming from a complaint if it originated from the client or intended user. Intended user means the client or any other party as identified by name or type, as a user of the appraiser's report.

Inactive Status. If a person's certificate, license, or registration is not renewed within one year after the expiration date of the certificate, license, or registration, the director of DOL (director) must place the certificate, license, or registration in inactive status.

Reinstatement. A person on inactive status may apply for reinstatement by paying the prescribed fee and meeting the requirements established by the director, which may include passing an exam and completing continuing education requirements. If the director requires

a work experience log, the director may accept previously approved work experience to satisfy the requirement. A person applying for reinstatement as a state-certified general real estate appraiser, a state-certified residential real estate appraiser, or a state-licensed real estate appraiser may apply to work as a state-registered appraiser trainee for a supervisory appraiser while completing the requirements for reinstatement.

Cancellation. The director must cancel a certificate, license, or registration that is not renewed or reinstated within five years after the expiration date.

Technical changes are made.

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 Proposed Substitute: PRO: Becoming a real estate appraiser takes a lot of education and trainee hours before taking the four to six hour exam. If a license becomes inactive for more than 12 months, you have to complete the process again.

Appraisers have been faced with frivolous lawsuits. There are people who have purchased the right to sue in the lawsuit but have not purchased the property. Many appraisers purge their files after 5 years, yet these lawsuits are coming 13 or 15 years later. It is very difficult to defend after that amount of time. Appraisers carry errors and omission insurance but that is limited. The lawsuits are causing an increase in the cost of the insurance. The increased cost of insurance is passed on to the consumer. Sometimes it makes it difficult to get insurance. Frivolous lawsuits damage an appraiser's reputation. Seven other states have passed similar legislation.

CON: This needs more work. Others need to be added to the bill. We are talking with the sponsor.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Robert Mossuto, President, Appraisers Coalition of Washington; Mike Rock, Appraisers Coalition of Washington; George Nervik, Appraisers Coalition of Washington.

CON: Ben Buchholz, Real Estate Valuation Advocacy Association.

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