

HOUSE BILL REPORT

SSB 5191

As Passed House - Amended:

April 11, 2023

Title: An act relating to reforming the real estate agency law to require written brokerage services agreements, improve consumer disclosures, and provide that certain legal duties of brokers apply to all parties in the transaction.

Brief Description: Reforming the real estate agency law.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Stanford, Dozier and Gildon).

Brief History:

Committee Activity:

Consumer Protection & Business: 3/14/23, 3/22/23 [DPA].

Floor Activity:

Passed House: 4/11/23, 97-0.

Brief Summary of Substitute Bill (As Amended by House)

- Requires a written services agreement between a real estate firm and a buyer or seller.
- Requires disclosure of certain information relating to real estate brokerages, such as compensation terms.
- Provides that certain legal duties of real estate brokers apply to all parties to the transaction.
- Modifies the Washington real estate brokerage pamphlet to include changes to the law and improvements in readability.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

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.

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, Santos and Volz.

Staff: Megan Mulvihill (786-7304).

Background:

Real Estate Brokers.

Chapter 18.86 RCW passed in 1996 and codified a number of duties concerning real estate brokerage relationships. The Department of Licensing is responsible for licensing and regulating real estate brokers. Performing real estate brokerage services includes, but is not limited to, rendering the following services directly or indirectly on another's behalf for compensation: (1) listing, selling, purchasing, or renting real estate; (2) negotiating or offering to negotiate the purchase, sale, or lease of real estate; (3) advising buyers, sellers, landlords, or tenants in connection with real estate; and (4) advertising oneself to the public as engaging in such services.

Agency Relationship.

A broker is an "agent" when the broker enters into an agency relationship with a buyer or seller to perform real estate brokerage services. A seller is only represented if the seller enters into a written agreement with the agent. An agent may represent a buyer unless the agent has entered into a written agreement with the seller. An agent does not need to have a written agreement with a buyer to perform services. An agent may represent both the buyer and the seller if all parties agree in writing. This is known as dual agency, and the written consent must disclose compensation information. Regardless of whether a broker is an agent, a broker owes certain duties, which may not be waived, to all parties to whom the broker renders real estate brokerage services, including to:

- exercise reasonable skill and care;
- deal honestly and in good faith;
- present all written offers, notices, and other communications in a timely manner;
- disclose all material facts known by the broker, and not easily ascertainable, to a party;
- account for all money and property received in a timely manner;
- provide a pamphlet on the law of real estate agency to all parties; and
- disclose what party a broker represents, if any, in a real estate transaction.

An agent need not conduct an independent investigation of the property or of either party's financial condition. The agent has no duty to verify any information the agent reasonably believes to be reliable.

Duties of an Agent.

Certain duties apply between an agent and a seller, an agent and a buyer, or in a dual agency

relationship, including the duty to:

- be loyal by taking no action that would be adverse to the client;
- disclose in a timely manner any conflicts of interest;
- advise the client to get expert advice on matters relating to the transaction beyond the agent's expertise; and
- refrain from disclosing confidential information about the client except under subpoena or court order.

These duties cannot be waived. The only duty that can be waived is the duty to make a good faith and continuous effort to seek a buyer for a seller or a seller for a buyer. It is not a breach of duty for the agent, in the case of a seller, to show or list competing properties, or in the case of a buyer, to show properties to competing buyers.

Subagent.

A subagent is a broker who is engaged to act on behalf of a buyer or seller by the buyer's or seller's agent, as long as the buyer or seller has authorized the broker in writing to appoint subagents.

Summary of Amended Bill:

Various definitions are updated to reflect changes to the real estate brokerage relationship chapter. The definition of subagent is stricken, as are all applicable statutory references.

Agency Relationship.

A real estate firm and broker must enter into a written services agreement with a principal to establish an agency relationship. The principal is either the buyer or seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers are also agents of the principal.

Written Services Agreements.

A written services agreement must contain:

- the term of the agreement, which has a default term of 60 days for an agreement between a buyer and broker;
- the broker appointed as an agent for the principal;
- whether the agency relationship is exclusive or nonexclusive;
- whether the principal consents to limited dual agency;
- the terms of compensation;
- in an agreement with a buyer, whether the broker agrees to show a property when there is no agreement or offer by any party or firm to pay compensation to the broker's firm; and
- any other agreements between the parties.

A service agreement is not required when a broker performs real estate brokerage services as a buyer's agent solely for commercial real estate.

Broker's Duties to All Parties.

In addition to existing duties owed by a broker to a principal, it is made explicit that the broker owes these duties to all parties in a transaction. Two additional responsibilities are added:

- to not only provide the statutorily required pamphlet explaining real estate brokerage in Washington to all parties to whom the broker renders real estate brokerage services, but also to any unrepresented party, and to obtain acknowledgment of receipt of the pamphlet; and
- to disclose in writing any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.

Limited Dual Agency.

In a transaction in which different brokers affiliated with the same firm represent different parties, the firm's designated broker, and any managing broker responsible for the supervision of both brokers, is considered a limited dual agent. Each appointed broker must solely represent the party with whom they have a relationship.

Compensation Disclosure.

To receive compensation from any party, a firm must have a written services agreement with the party the firm represents. In lieu of a written services agreement, a broker rendering services to a buyer solely for commercial real estate may disclose in writing to the buyer the sources and amounts of any compensation the broker expects to receive.

Washington Real Estate Agency Pamphlet.

The pamphlet brokers are required to provide to all parties to a transaction is updated to reflect changes in the law, and the pamphlet language is specified in layman's terms rather than reiterating statutory law.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony:

(In support) This legislation provides more transparency regarding real estate brokers. The state real estate law has not been changed since 1977. The bill essentially addresses four things, but the fundamental change in this legislation is requiring buyers to enter into services agreements with brokers. Buyers should be afforded the same opportunity as sellers in understanding their relationship with a broker in terms of duration, identity of the broker, exclusivity, and compensation. Buyers are being misled because they do not know what their brokers are being paid. Second is to update the pamphlet on Washington real

estate law. Washington's pamphlet is labeled the worst in the country. Third, the legislation addresses a Court of Appeals decision to clarify that a broker's duties are owed to all parties involved in a transaction. Fourth, a consumer has to separately consent to enter into single-agent dual agency by understanding that they will no longer have an advocate in the transaction.

Buyers and sellers have expressed concerns about things they think need to be changed, and this legislation is in response to that. There are some criticisms and amendment ideas up for discussion, such as ensuring the consumer understands the difference between exclusive and nonexclusive arrangements, specifying a term limit so it does not go on indefinitely, and ensuring the buyer understands their termination rights.

(Opposed) Everything in this bill is designed to protect the industry and not the consumer. It forces buyers into agreements with brokers before they even know whether they like the broker. Imagine this happening with car dealers and having to sign an agreement the minute a buyer enters a car lot. Even if the buyer terminates the services agreement, the contractual obligations continue on. Buyer agency agreements should not be required. Instead, require a broker to provide a disclosure for how they intend to be paid. This would give buyers the information they need to negotiate terms and could be a vehicle for disclosures.

Persons Testifying: (In support) Senator Derek Stanford, prime sponsor; Bill Clarke, Washington Realtors; Justin Haag, Northwest Multiple Listing Service; and Chris Osborn, Stoel Rives Law Firm.

(Opposed) Kary Krismer.

Persons Signed In To Testify But Not Testifying: None.