

# SENATE BILL REPORT

## SSB 5399

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As Amended by House, 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:** Business, Financial Services, Gaming & Trade: 1/24/23, 2/09/23 [DPS].

Ways & Means: 2/20/23 [w/oRec].

**Floor Activity:** Passed Senate: 3/2/23, 49-0.

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

### Brief Summary of First Substitute Bill

- Limits agreements that obligate the owner of residential real estate to a future real estate listing agreement to a term no longer than two years.
- Makes future listing right purchase contracts subject to the Consumer Protection Act.

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## SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

**Majority Report:** That Substitute Senate Bill No. 5399 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member; Boehnke, Gildon, Hasegawa, Lovick, MacEwen and Mullet.

**Staff:** Clinton McCarthy (786-7319)

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*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.*

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Julie Murray (786-7711)

**Background:** Real Estate Brokers. The Department of Licensing is responsible for licensing and regulating real estate brokers, who must meet minimum age, education, and experience requirements to obtain a license to perform real estate brokerage services on behalf of a licensed real estate firm. Performing real estate brokerage services includes, but is not limited to, rendering the following services directly or indirectly on another's behalf for compensation:

- listing, selling, purchasing, or renting real estate;
- negotiating or offering to negotiate the purchase, sale, or lease of real estate;
- advising buyers, sellers, landlords, or tenants in connection with real estate; and
- advertising oneself to the public as engaging in such services.

A broker is an agent when the broker enters into an agency relationship with a buyer or seller to perform real estate brokerage services, which relationship may be created by written agreement or statute. Regardless of whether a broker is an agent, a broker owes to all parties to whom the broker renders real estate brokerage services certain duties, which may not be waived, including:

- exercising reasonable skill and care;
- dealing honestly and in good faith;
- presenting all written offers, notices, and other written communications to and from parties in a timely manner; and
- disclosing existing material facts a broker knows and are not apparent or readily ascertainable to a party.

Duration of Agency Relationship. "Agency relationship" means a written agreement between a real estate firm and a buyer or seller relating to the performance of real estate brokerage services.

Under existing statute, the agency relationship between a broker and a buyer or seller is until the earliest of the following:

- completion of performance by the broker;
- expiration of the term agreed upon by the parties;
- termination of relationship by mutual agreement between the parties; or

- termination of the relationship by notice from either party to the other. Such a termination does not affect the contractual rights of either party.

There is no limit under existing statute on how long an agency relationship can last. Nothing 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.

**Summary of First Substitute Bill:** The term "future listing right purchase contract" is defined as a contract obligating an owner of residential real estate to enter into a real estate listing agreement in the future relating to the sale of the real estate.

These agreements cannot last for more than two years. An owner has ten days after entering into one of these contracts to provide a notice of cancellation which allows the owner to get out of the contract without a penalty or further obligation.

The attorney general may bring actions to enforce compliance with this section by making the provisions subject to the Consumer Protection Act.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony on Original Bill (Business, Financial Services, Gaming & Trade):** *The committee recommended a different version of the bill than what was heard.* PRO: The general view of realtors in Washington is extremely positive. People figure out what the commission is up front and they buy their homes. Only recently have there been some bad actors in this space. No one should tie up their home for 40 years. This bill sets it up so that these agreements cannot last longer than 5 years—some will think that even this is too long. This also makes it difficult to refinance or pull equity out of your home. Banks think it is too much of a headache to work through the liens that these agreements create. People don't know what they are giving up when entering into these purchase agreements. This acts as a lien that impairs the owner's ability to unlock capital from their home. This bill addresses the length of the agreement. The freedom of contracts is paramount, but there are times where the Legislature has to protect people from unfair contracts. The American Land Title Bill has model language that can attack unfair listing agreements. Washington State Realtors hadn't previously heard about this agreements and do not see how these could be to the benefit of the consumer. They have some technical agreements.

CON: MV Realty recognizes that while their contracts are fully compliant with state law, but we have better language in model legislation that can improve the understanding of the how these contracts work. The average value for a Washington home participating in the MV Realty program is more than \$440,000. The program will voluntarily come down from 40 years to 30 years to match up with 30 year mortgages. There are appropriate steps to make these agreements better regulated. There should be appropriate limitations on the term of the agreement. As a consumer, we feel like we were robbed by this company.

OTHER: Home Options is trying to bring innovation into the market. Real estate is spending \$26 billion a year on advertising. Advertising is a major driving in the cost of real estate transactions. Home Options redirects that spending to the sellers. Let the home owner choose the length of an agreement that they want, and we can pay the home owner accordingly to have the choice of how long their term is.

**Persons Testifying (Business, Financial Services, Gaming & Trade):** PRO: Senator Mark Mullet, Prime Sponsor; Dwight Bickel, Washington Land Title Association; Steven Bender; Nathan Gorton, Washington REALTORS; Allan McPherson.

CON: Andrew Mathews, HomeOptions; Jack Kelly, MV Realty PBC LLC.

OTHER: Kevin Li, CEO of HomeOptions.

**Persons Signed In To Testify But Not Testifying (Business, Financial Services, Gaming & Trade):** No one.

**Staff Summary of Public Testimony (Ways & Means):** No public hearing was held.

**Persons Testifying (Ways & Means):** N/A

**Persons Signed In To Testify But Not Testifying (Ways & Means):** N/A

#### **EFFECT OF HOUSE AMENDMENT(S):**

The duration of future listing right purchase contracts is increased from two to five years. Language is added to prohibit these types of contracts from being used as a lien against real property. The Washington Real Estate Commission is directed to convene a workgroup to examine how real estate brokerages market, establish, and enforce future listing right purchase contracts. The definition of "future listing right purchase contract" is clarified to grant an exclusive right to list residential real estate for sale in the future.