

HOUSE BILL REPORT

HB 2059

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to real estate agency law, but only to clarify that the statutory duties of real estate brokers apply to all parties and prohibiting the delivery of buyer unfair practice letters to the seller of residential real estate.

Brief Description: Concerning real estate agency law, but only to clarify that the statutory duties of real estate brokers apply to all parties and prohibiting the delivery of buyer unfair practice letters to the seller of residential real estate.

Sponsors: Representatives Gregerson, Leavitt, Morgan, Vick, Gilday, Rude, Chapman, Barkis and Lekanoff.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/27/22, 1/31/22 [DPS].

Brief Summary of Substitute Bill

- Prohibits real estate brokers from presenting a "buyer unfair practice letter," defined as a written communication from a buyer, or someone acting on a buyer's behalf, reasonably read to be intended to persuade a seller of residential real estate to sell to a buyer because of a status, trait, class, or characteristic identified in Washington's Law Against Discrimination, or any related law.
- Provides that brokers rendering real estate brokerage services owe statutory duties to all parties in a transaction.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Kirby, Chair; Walen, Vice Chair; Vick, Ranking

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.

Minority Member; Corry, Ryu and Santos.

Minority Report: Without recommendation. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

Staff: Michelle Rusk (786-7153).

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: (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.

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.

A recent Washington State Court of Appeals case, *Falcon Properties, LLC v. Bowfits 1308, LLC*, stated that the statutory duties of real estate brokers apply only to the broker's own client, not to other parties in a transaction.

Housing Discrimination Laws.

Federal, state, and local laws prohibit discrimination in the sale or rental of housing. The Washington Law Against Discrimination prohibits discrimination in real estate transactions or services based on race, color, creed, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, or honorably discharged veteran or military status. The law also protects persons from discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

Summary of Substitute Bill:

A real estate broker who renders real estate brokerage services owes statutory duties to all parties, rather than to all parties to whom the broker renders real estate brokerage services.

A new statutory duty for real estate brokers is added, which requires brokers not to: (1) present, or facilitate the provision of, a "buyer unfair practice letter" to a seller, or (2) present other written communication related to a prospective transaction that a seller instructs a broker in writing not to present. A "buyer unfair practice letter" means a written communication or image from a buyer, or someone acting on a buyer's behalf, reasonably interpreted to be intended to persuade a seller of residential real estate to sell to a buyer because of a status, trait, class, or characteristic identified in Washington's Law Against Discrimination relating to real estate transactions, facilities, or services, or any related law.

Refraining from presenting a buyer unfair practice letter is made an exception to a broker's duty to present all written offers, notices, and other written communications to and from parties in a timely manner.

Substitute Bill Compared to Original Bill:

The substitute bill includes "images" in the definition of buyer unfair practice letter.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Purchasing a home is one of the largest investments a person can make, and House Bill 2059 helps to better guide and protect the public. Both aspects of this bill are important to consumer protections.

The court decision in *Bowfits v. Falcon* undermined protections intended by agency law for consumers when it ruled that minimum agency law duties are owed only to a party represented by a broker. That was not the intention of that language or what the industry teaches to brokers regarding the meaning of the language.

The more difficult issue is the notion of "love letters." In a strong seller's market, buyers are increasingly motivated to make their offers competitive. "Love letters" are a double-edged sword, as they can easily lead to the possibility that a seller may end up violating the

Fair Housing Act in the process of selecting a buyer. There are numerous Fair Housing Act allegations and violations each year in the hundreds of real estate transactions that occur, and when there is a fair housing allegation, no one wins and it is an extremely unpleasant issue for everyone involved.

Oregon was the first to enact this type of legislation, and the language in House Bill 2059 was crafted intentionally by defining what is perceived to be the concept of a "love letter" and then banning them. The language is narrow because it tries to avoid a free speech issue. The more important language is language providing that a seller has the authority to instruct a broker not to present love letters to the seller prior to mutual acceptance. This allows a seller to avoid a Fair Housing Act violation by simply instructing parties that there will be no love letters. Images or pictures were not included in the definition of buyer unfair practice letter and should be included.

(Opposed) None.

Persons Testifying: Representative Mia Gregerson, prime sponsor; Mary Hull-Drury and Annie Fitzsimmons, Washington Realtors; and Michael Spence.

Persons Signed In To Testify But Not Testifying: None.