

HOUSE BILL REPORT

ESHB 2059

As Passed House:
February 10, 2022

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 broker duties.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by 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].

Floor Activity:

Passed House: 2/10/22, 95-0.

Brief Summary of Engrossed Substitute Bill

- 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 Minority Member; Corry, Ryu and Santos.

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

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.

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.

Summary of Engrossed 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.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: 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.