

HB 1081 Solicited real estate (concerns with a high priority)

Multiple reviews Maureen, George, Megan, Robin and Michelle

See attached

HB 1115 Recording fees/escrow tax (Support)

Need to select people to testify and prepare testimony

SB 5057 Agricultural real estate (concerns with a high priority)

Michelle Taylor reviewed 5057, this is the foreign ownership of ag lands bill. While it does not use void or voidable, it does not contain the ALTA suggested legislative text and does not sufficiently address most of our industry concerns. It does not specifically place responsibility with the buyer. It does not create a any procedure for divestment, designate a state enforcement authority, or address protection of the public record. I think this is of industry concern and we should keep an eye on it. I have attached the ALTA suggested legislative language and talking points for this issue

See attached

SB 5078 Agricultural real estate (concerns with a high priority)

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See attached

SB 5111 Recording fees/escrow tax (Support)

Need to select people to testify and prepare testimony

Maureen: This bill would provide additional protections to the seller in a transaction where the buyer actively solicited the purchase of a property that is not currently being offered for sale and where the Seller is not represented by a licensed Realtor. It would require that the contract specifically notes that the seller has a right to have an appraisal done by an appraiser of their choosing and paid for by the buyer and that they have the right to cancel the contract within 4 days of receiving the appraisal without penalty or further obligation. For owners who do not choose to have an appraisal done they have the right to cancel the contract without penalty or further obligation within 10 business days after execution. It also adds specific requirements for how these rights will be shown in the contract and that the seller must affirmatively acknowledge them. Would it fall on us to confirm that the contract in a transaction we close meets these requirements? If it doesn't and we close and insure the transaction would we be open to a claim down the road?

JP: I feel we also need to have some clarification on the earnest money and how/ if, it will affect our ability to interplead funds RCW 64.04.220.

George: I would assume that escrow should confirm that there is no Realtor® involved as the transaction progresses, beyond what the signed PSA says (for example, might it be possible that either party could retain, or even just speak to, a Realtor® after the PSA is executed?), and could always ask for confirmation from the seller that it has complied with the terms of the PSA. Someone with more escrow experience than I have can speak to that.

I agree with JP that escrow should still be able to interplead funds if there is a dispute between buyer and seller.

Megan: I don't think it should be our responsibility, so some safe harbor language would be ideal. Perhaps we could suggest that, along with a sentence providing that in the event of a cancellation of the sale, they are subject to the interpleader laws set forth in RCW 64.04.220.

Robin: From an escrow standpoint, I am not a party to the PSA nor do I believe that escrow should be responsible to seek to confirm that there is no realtor if not listed on the PSA and I specifically don't think it escrows responsibility to ensure that the Seller has complied with terms of an agreement that ESCROW is not a party to. We pack enough "beyond escrow" requirements on to our Escrow Officers now, I don't like the idea of putting them in the middle of terms of the PSA that go beyond our closing instructions.

Maureen: This bill feels like a response to a constituent's bad experience selling a house to one of the outfits that buy properties on a wholesale contract, it looks good on the surface - who would be against extra protections for unsophisticated sellers? - but implementing it in any meaningful way seems unlikely

without some way to get the word out to sellers. I'm still trying to understand how the people who would fall under this new rule let alone those who they are trying to protect, will even know it exists. It would make more sense if the bill was proposing to create a new PSA for solicited real estate transactions not involving Realtors but, again, how would these transactions be identified since the people involved are not licensed in any way so it's not as if they can be notified of the new rule?

Robin: My very first response to this was how is an individual seller, or even legit individual buyer (not one of the “cash buy company guys) to know that this regulation is out there. When these “buyers” use their own drafted purchase agreements that have virtually no information, there is no consistency at all. They already put escrow in the middle because they don’t have representation and we walk a very thin line in guiding FSBO transactions thru the process as it is. I think a standardized PSA to be required to be used on non realtor transactions would be a better start to include all the appropriate disclaimers and State requirements. At that point, at least escrow can say “this is not the appropriate PSA” and decline to close. Happy to give them a link to a State website where they can pull the State required form.

Also agree that escrow does NOT want to be involved in verifying anything that has to do with legislative requirements on either party. WE are not party to the PSA, and should not even get our selves into the middle of its conditions. Our escrow instructions even state “all terms and conditions of the PSA have been met and are accepted by the parties”. What this would mean for us is that I create a very stout escrow instructions disclaimer, that in and of itself will likely scare a buyer away, as well as having them sign off that we advised both parties to contact legal counsel, etc.

Lindsay: If a seller sues to set aside a deed under this section based on the consumer protection act, we could get brought into the middle. Training will be needed for title and escrow to make sure that the seller received the notification and either declined an appraisal or obtained one and is comfortable with the transaction.

George: Here is what I propose for the summary to pass along to the sponsor, along with the redline attached (this redline differs from my earlier one in that the comments are deleted and shown below). If all are in agreement with this, or with changes suggested by others, Carrie can pass along the summary and the attachment to the sponsor in a separate email.

I think I have figured out what the target of the bill is. I’ve included that assumption in my comment about existing Section 5 (renumbered to Section 6 in the redline).

Comments and Questions on HB 1081 by Washington Land Title Association:

1. It is unclear from New Section 5 (what “the legislature finds”) what activity the statute is intending to regulate. It would appear that a seller would be protected from low-ball offers to purchase their home without the opportunity to confirm that the offer is reasonable or that the seller could theoretically negotiate a better price. Such offers come from “we buy homes” signs on street corners, random phone calls or other means outside of working with a Realtor® (who would usually arrange a listing on an MLS or similar service). Presumably the offers are aimed at those who solicit unsophisticated individuals (typically a homeowner) who may find the offer of ready cash attractive. If there is a particular issue that can arise in such sales, perhaps it can be expressly stated in this section.
2. Presumably a Realtor® could solicit a private sale, and find a buyer (or have one in hand) without listing the property.

ONE: Would a Realtor® who arranges a private sale without listing on an MLS be subject to the statute? For example, are there any other regulations applying to Realtors® that would protect a buyer found by the Realtor® which might need to be included or referenced in this statute, and if not, should this statute expressly include Realtors® or at least not inadvertently exclude them?

TWO: Would a private buyer represented by a Realtor® be subject to the statute – that buyer would not be the one soliciting the property, at least directly. In other words, might this statute inadvertently burden a buyer who did not directly solicit the sale, which sale is still private and not based on a public listing?

3. New Section 1 should include a reference to an existing contract, since subsequent sections appear to presume that one exists. The existence of an executed contract would establish a timeline for ordering an appraisal and complying with subsequent sections.
4. NEW SECTION 1(b) should provide for written notice. (The redline language about the form of notice can be based on other RCW sections that define “written notice”).
5. NEW SECTION 2(a) can refer to the owner in singular and not plural. The section should refer to “the” real property – again, this needs to tie the property in the contract.
6. NEW SECTIONS 2(c) and (3) should refer to the “written” notice.

7. A NEW SECTION 5 is added to clarify that third parties involved in the transaction, including title companies, escrow services, etc., continue to have rights afforded by statute.
8. A section of definitions could be added, which would clarify some of the terms as they are used in the statute. They might include:
 1. “publicly available” presumably this means an MLS service or a platform like Zillow or Redfin, but should be broad enough to encompass any potential publicly available listing
 1. “listed on the real estate market” – similarly, this presumably means an MLS service or a platform like Zillow or Redfin, but should be broad enough to encompass any potential publicly available listing.
 1. “real estate market”
 1. “potential buyer” – this should include an actual buyer once the contract has been signed.
 1. “purchase contract” – this should mean the specific contract that applies to the real estate under contract.

Please feel free to offer any suggestions on the above.

HOUSE BILL 1081

State of Washington

69th Legislature

2025 Regular Session

By Representatives Donaghy and Connors

Prefiled 12/16/24.

AN ACT Relating to establishing consumer protections for owners of solicited real estate; and adding a new chapter to Title 61 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) For real estate transactions in which a potential buyer actively solicits the purchase of real property through public advertising or written, electronic, or in-person contact with an owner of real property that is not currently publicly available or listed on the real estate market for purchase, the owner of the solicited real property shall upon execution of a purchase contract between the potential buyer and the owner of the solicited real property:

(a) Have the right to an appraisal of the real property by an appraiser licensed in accordance with chapter 18.140 RCW;

(b) Receive written notice by paper, email or other tangible or electronic form from the potential buyer of the owner's right to an appraisal as described in subsection (2) of this section; and

(c) Have the right to cancel the purchase contract without penalty or further obligation subject to subsection (2) of this section.

(2) (a) For the owners of the real property who wishes to exercise their right to an appraisal:

(i) The owner has the right to select the appraiser, and the potential buyer is responsible for the expense of the appraisal;

(ii) The appraisal must be ordered within three business days after the execution of the purchase contract, and the owner of the real property shall notify the buyer of the appraisal; and

(iii) The owner of the real property has the right to cancel the purchase contract, without penalty or further obligation, within four 6 business days after the appraisal is received.

(b) For owners of real property who do not wish to receive an appraisal, the owner has the right to cancel the purchase contract without penalty or further obligation within 10 business days after execution of the contract.

(c) In the event of cancellation, the owner of the real property shall send a-written notice of cancellation to the buyer by mail, telegram, email, or other means of written communication. Notice of cancellation is considered given when mailed, when filed for telegraphic transmission, when emailed, or if sent by other means, when delivered to the buyer's designated place of business.

(3) The purchase contract for a real estate transaction described in this section must state clearly in at least size 10-point boldface type, and the seller must affirmatively acknowledge in writing, that the seller:

(a) Has a right to an appraisal as specified in subsection (2) of this section; and

(b) Has a right to cancel the purchase contract without penalty or further obligation in accordance with subsection (2) of this section.

(4) This section does not apply to a buyer or seller represented by a real estate broker licensed in accordance with chapter 18.85 27 RCW.

(5) Nothing in this chapter affects the rights accruing to any party as set forth in Chapter 64.04.220 RCW. Any party subject to Chapter 64.04.220 RCW has the right to request proof of compliance with this chapter.

(56) The attorney general may bring actions to enforce compliance with this section. The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 32 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new chapter in Title 61 RCW.

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Principles for Legislation Regarding Foreign Ownership of US Real Estate

Real estate transactions represent approximately 13% of U.S. gross domestic product. Given the importance of real estate to the U.S. economy, any law regarding foreign ownership should establish specific processes and procedures to protect valid property interests and avoid penalizing legitimate sellers, creditors, and future owners of property.

Impose Obligations Directly and Only on Buyers

Only buyers and their legal representatives have sufficient information to determine property ownership eligibility. If bills require reporting of a transaction to the state or other agency, this obligation should be on the buyer directly and should not be the responsibility of any other party.

State Laws Must Not Void Transactions

Any law must lay out a process for a forced divestment or forfeiture by a court of competent jurisdiction after a state agency brings an enforcement action. Unwinding a transaction via judicial proceeding allows legitimate interest holders and creditors (like mortgage and mechanics lienholders) to be made whole. State laws should expressly state that land titles are not invalid, impaired, or subject to forfeiture because of the foreign status of any former owner or other person having an interest in the property.

Designate an Appropriate State Enforcement Authority

To avoid harmful complications created by invalidating property transfers, legislation should give state agencies enforcement authority, providing investigative powers and establishing due process followed by voluntary or forced divestment of the real estate as appropriate.

Follow Existing State Divestment Procedures Like Forfeiture or Foreclosure Laws

The only remedy for violation of these laws should be a forfeiture or foreclosure type action brought by the state to divest the property, which results in an unappealable judgment.

Safeguard the Reliability of US Property Records

Relevant documents and/or court orders must be recorded by authorized state agencies within local land records. Recordation provides notice of enforcement actions and creates a continuous chain of title, which are necessary to protect future transactions.

Protect the Neutral Role of Title Insurance and Real Estate Settlement Professionals

The foreign ownership bills should not impose obligations that would threaten the role of the title industry as a neutral third party in real estate transactions. To that end, no legislation should require title insurance companies or their employees to make a determination as to the buyer's national identity, require reporting or the submission of data to a state agency, or impose extra-contractual, civil, or criminal liability for closing a prohibited transaction in good faith.

Suggested Legislative Text for Bills Regarding Foreign Ownership of US Real Estate

State lawmakers are considering bills restricting the ability of certain foreign individuals and entities to buy property within the state. In some instances, the bills prohibit ownership of certain types of property, such as farmland, or disallow property ownership with proximity to agricultural businesses, military bases or other property deemed essential to national security.

Real estate transactions represent approximately 13% of U.S. gross domestic product. Given the importance of real estate to the U.S. economy, any law regarding foreign ownership should establish specific processes and procedures to protect valid property interests and avoid penalizing legitimate sellers, creditors, and future owners of property.

Bills should incorporate the following:

1. Clearly defined prohibitions and express remedy for enforcement

Sample legislative text: *A transfer of an interest in land in violation of this section shall be subject to divestiture as set forth in this section.*

2. Identification of the agency responsible for enforcement and clear articulation of its investigative powers

Sample legislative text: *The [attorney general or appropriate state authority], upon the request of any person or upon receipt of any information which leads the [attorney general] to believe that a violation of this section may exist, may issue subpoenas requiring the appearance of witnesses, the production of relevant records and the giving of relevant testimony.*

3. Provide for divestment of property acquired in violation of the law with appropriate due process protections (via voluntary transfer or forced divestiture following established process such as judicial foreclosure, receivership, or partition)

Sample legislative text: *On concluding, as a result of the investigation, that a violation of this section has occurred, the [attorney general] shall order the [foreign entity] to divest itself of all interests in the land within 90 days. If the [foreign entity] fails to divest itself of all interests, or if an interest holder timely objects to the order of divestiture, the [attorney general] shall commence an action in [superior] court. Except in the case of dismissal, the court shall order that the property be sold pursuant to [insert appropriate state statute for judicial foreclosure, receivership, or partition action under a power of sale].*

4. Protect previous owners, lien holders and future purchasers from loss or litigation

Sample legislative text: *Proceeds of the sale shall be disbursed to lien holders, in their order of priority, except for liens which under the terms of the sale are to remain on the property.*

No title to land shall be invalid or subject to divestiture by reason of the violation of this section by any former owner or other person holding or owning a former interest in such land.

No person not subject to this section shall be required to determine or inquire into whether another person is or may be subject to this section.

5. Safeguard the Reliability of US Property Records

Sample legislative text: *Upon commencement of an action under this section, the [attorney general] shall promptly record a notice of the pendency of the action in the [local land records]. Upon the entry of order for the sale of the property under this section, the attorney general shall promptly record a copy of such order in the [local land records].*