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S.B. 192
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Brenner

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SUMMARY

- Requires individuals dealing in residential real estate contracts to be licensed as a real estate broker.
- Requires wholesalers of residential real property to make certain disclosures.

DETAILED ANALYSIS

Real estate brokers

Under continuing law, individuals engaged in certain specified real estate activities on behalf of another person must be licensed as a real estate broker.¹ Under the bill, this list of activities is expanded to include those dealing in residential real estate contracts, regardless of whether those dealings are on behalf of another person. Specifically, those engaged “in the business of buying, selling, offering to buy or sell, marketing for sale, exchanging, or otherwise dealing in contracts, including novations and assignable contracts, for the purpose or sale of residential real estate”²

Wholesalers

Definitions

The bill also introduces disclosure requirements for wholesalers. Under the bill, a wholesaler is defined as “a person or entity that, for a fee, commission, other valuable consideration, or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, enters into a purchase contract

¹ R.C. 4735.02, not in the bill.

² R.C. 4735.01(A).

for residential real property either as the grantee, and assigns or novates that contract to another person or entity, [or] as the grantor, and, without holding legal title to that real property, assigns or novates that contract to another person or entity.”³

Under the bill, residential real estate is “real property containing one to four dwelling units.”⁴

Disclosure

Requirements

The bill requires wholesalers to disclose certain information before entering into a contract transferring real estate.

If the wholesaler is the grantee (the purchaser of the property), the wholesaler must disclose to the owner of the property, on a form prescribed by the Superintendent of Real Estate, all of the following:

- That the grantee is a wholesaler and is buying the property intending to make a profit;
- That the wholesaler may assign the wholesaler’s interest in the property to a third party and may collect a fee from the ultimate buyer of the property, separate from any fee included in the contract between the wholesaler and the owner of the property;
- Acknowledgement by the property owner that the purchase price may be less than the actual market value of the property, and that the property owner voluntarily transfers the property to the wholesaler at that price;
- Whether the wholesaler holds an active real estate broker or salesperson license and, if not, that the wholesaler is not representing the property owner and is not acting as their broker or agent in the transaction;
- That the property owner is advised to seek legal advice before entering into the agreement.⁵

If the wholesaler is the grantor (the seller of the property), the wholesaler must disclose to the buyer of the property, on a form prescribed by the Superintendent of Real Estate, all of the following:

- That the grantor is a wholesaler that holds an equitable interest in the property and may not be able to convey title to the property;

³ R.C. 5301.95(A)(3).

⁴ R.C. 5301.95(A)(1).

⁵ R.C. 5301.95(B)(1).

- Whether the wholesaler holds an active real estate broker or salesperson license and, if not, that the wholesaler is not representing the buyer and is not acting as their broker or agent in the transaction;
- That the buyer is advised to seek legal advice before entering into the agreement.⁶

The Superintendent of Real Estate is required to make disclosure forms that satisfy the above requirements and include instructions for completion and space for the parties to sign and date the form.⁷

Penalties

The bill specifies the penalties for failing to make the disclosures required above.

If the wholesaler fails to provide the required disclosures, the other party may cancel the contract prior to the close of the escrow without penalty. If the wholesaler is the grantee, the owner of the property may retain any earnest money paid by the wholesaler. If the wholesaler is the grantor, the buyer of the property must be refunded all earnest money paid to the wholesaler. These penalties cannot be waived or modified by agreement of the parties. Any agreements executed, modified, or extended after the bill goes into effect are void and unenforceable.⁸

Any violation of the disclosure requirements is considered an unfair or deceptive act or practice. The party injured by the violation has a cause of action against the wholesaler and is entitled to relief of their economic damages plus up to \$5,000 in noneconomic damages. The Attorney General may investigate and bring actions against a wholesaler alleged to have violated the disclosure requirements.⁹

HISTORY

Action	Date
Introduced	11-21-23

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⁶ R.C. 5301.95(B)(2).

⁷ R.C. 5301.95(C).

⁸ R.C. 5301.95(D).

⁹ R.C. 5301.95(D)(3); R.C. 1345.07 and 1345.09, not in the bill.