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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 155
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Brenner and Ingram

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SUMMARY

- Requires wholesalers acting as the grantee in a transaction that conveys an interest in residential real property to make certain disclosures to the property owner.
- Allows the property owner to cancel a contract with a wholesaler that fails to make those disclosures, without penalty, any time before the close of escrow.
- Requires the escrow or closing agent to disburse any earnest money paid by such a wholesaler to the record owner within 30 days after such a cancellation.
- Specifies that real estate professionals who fail to comply with these requirements are subject to disciplinary action by the Superintendent of Real Estate.

DETAILED ANALYSIS

Overview

The bill requires wholesalers to make certain disclosures to the property owner before entering into a contract that conveys an interest in residential real property. Wholesaling is a process whereby a person enters into a contract to purchase property and then transfers, or grants, the right to purchase the property to another person. A wholesaler never actually takes ownership of the property. A wholesaler makes money by either by charging a wholesale fee to the buyer or by charging the buyer a higher price for the real property than the amount that the wholesaler agreed to pay the seller. Current law does not explicitly address the practice of wholesaling. However, wholesalers, like any other person, are prohibited from engaging in any activity that would require a real estate professionals license without such a license, such as marketing a property to the general public.

Key terms

A “wholesaler” is defined under the bill as a person or entity that for a fee, commission, or other valuable consideration, enters into a purchase contract for residential real property and assigns or novates that contract to another person or entity. A wholesaler may act in the place of a grantee (purchaser) or grantor (seller) of the residential real property. However, the bill’s notice requirements apply only to wholesalers acting in place of the purchaser. The bill excludes from the definition an individual who assigns or novates a contract to a blood relative or a person that assigns or novates a contract to a parent, affiliate, subsidiary, or affiliated group under common control with the person.

The bill applies only to residential real property that is improved by a building or other structure that has one to four dwelling units.¹

Mandatory disclosure

Prior to entering into a contract that transfers an interest in residential real property, a wholesaler acting in place of the purchaser must provide the record owner with a conspicuous written disclosure statement. The disclosure statement must be separate from the purchase contract or agreement and printed in boldface type in a font size not less than 12 points. The bill requires the disclosure statement to be in substantially the following form:

Ohio law requires a wholesaler acting as a grantee, before entering into a contract or agreement that conveys an interest in residential real property, to provide certain information to the record owner in a conspicuous manner printed in boldface type in a font size not less than twelve points. Failure by a wholesaler to present or complete this form is an unfair or deceptive act or practice. Any person who enters into an agreement that conveys an interest in residential real property to a wholesaler acting as a grantee without receiving this disclosure has a cause of action against the wholesaler. A wholesaler acting as a grantee is prohibited from entering into a binding contract to acquire an interest in residential real property unless this statement is signed and dated by the record owner of the property.

The owner acknowledges that the person presenting this document is a wholesaler, as defined by section 5301.95 of the Revised Code, and that the owner is advised to seek legal advice before entering into any agreement or contract with the wholesaler. A wholesaler is acting on the wholesaler’s own behalf and does not represent the owner in this transaction. A wholesaler enters assignable contracts with owners and seeks to sell or assign the wholesaler’s interest for a profit. The wholesaler may assign

¹ R.C. 5301.95(A).

the wholesaler's interest in the purchase contract to a third party without the owner's consent before closing. The wholesaler may charge a fee to the third-party buyer separately for profit. The agreed purchase price between the owner and wholesaler may be below market value and is conveyed voluntarily.

The owner acknowledges disclosure of the information provided in this form by signing and dating below:

_____ (Property owner signature) _____ (date)

_____ (Wholesaler signature) _____ (date)

A wholesaler acting as the grantee is prohibited from entering into a binding contract that transfers an interest in residential real property until both the wholesaler and the record owner of the property sign and date this disclosure statement required by the bill.²

Enforcement

If a wholesaler acting in place of the purchaser fails to make the disclosures required by the bill, the record owner may cancel the contract at any time prior to the close of escrow without penalty. The bill requires the escrow or closing agent to disburse any earnest money paid by the wholesaler to the record owner within 30 days after such cancelation.

The bill prohibits a wholesaler from attempting to modify or waive the disclosure requirements and remedies through an oral or written agreement. Any portion of an agreement that is executed, modified, or extended after the effective date of the provision that modifies or waives a duty to disclose is void and enforceable.

A violation of the bill's requirements is an unfair or deceptive practice under the Consumer Sales Practices Act (CSPA). A party that enters into an agreement without receiving the disclosure required in the bill has a cause of action against a wholesaler and is entitled to the same relief available to a consumer under the CSPA. All powers and remedies available to the Attorney General to enforce the CSPA are available to the Attorney General to enforce the requirements of the bill.³ The CSPA allows consumers, via private lawsuit, to recover actual economic damages plus an amount of no more than \$5,000.⁴

Real estate professionals

The bill expands those practices for which a real estate professional can be disciplined to include failure to comply with the bill's wholesale disclosure requirements. The Superintendent of Real Estate is authorized to impose the following administrative penalties against a person who commits one of these practices:

² R.C. 5301.95(B).

³ R.C. 5301.95(C).

⁴ R.C. 1345.02(A), not in the bill.

- Revocation of license;
- Suspension of license for a term set by the Superintendent;
- Impose a fine of no more than \$2,500 per violation;
- Issue a public reprimand.⁵

The bill expands those instances in which escrow accounts release earnest funds held to include those situations where a wholesale transaction by the record owner of residential property due to a wholesaler failing to make the required disclosure.⁶

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 03-25-25 |

ANSB0155IN-136/ts

⁵ R.C. 4735.18(A)(40).

⁶ R.C. 4735.24(A)(4).