

Future Listings Purchase Contracts

December 2024



Table of Contents

Report Introduction and Overview 2

Executive Summary..... 2

Recommendations:..... 3

Findings 4

Future Listing Right Purchase Contract..... 5

Attorneys General Lawsuits..... 6

Legislation 7

Surveys 11

Listening Sessions..... 16

Recommendations..... 17

Considerations for Future Contracts..... 17

Considerations for Prior Contracts..... 19

Additional Considerations 19

Report Introduction and Overview

[Substitute Senate Bill \(SSB\) 5399](#), enacted during the 2023 legislative session, directed the Department of Licensing (DOL) to form a work group, as well as submit a report with the work group's findings and recommendations regarding future listing right purchase contracts that are used by real estate companies. The complete directive from Senate Bill 5399 is below:

"The Washington real estate commission established under chapter 18.85 RCW shall convene a work group to examine practices used by real estate brokerage companies to market, establish, and enforce future listing right purchase contracts in order to provide recommendations for consumer protections and potential regulations, including potential licensing requirements.

The work group shall be staffed by the department of licensing and include representatives from associations that represent real estate brokers, real estate brokerage companies who offer future listing right purchase contracts, and other entities that the Washington real estate commission deems appropriate. The commission shall report back to the appropriate committees of the legislature in accordance with RCW 43.01.036 by December 1, 2024, with the work group's findings and recommendations."

Executive Summary

[SSB 5399](#) was enacted by the Legislature to study future listing right purchase contracts for potentially causing harm to the public. A future listing right purchase contract is defined as 'a contract granting an exclusive right to list residential real estate for sale in the future and includes, but is not limited to, any document recorded in the county where the real estate is located relating to the contract including the contract itself, a memorandum concerning the contract, or a deed of trust to secure the terms of the contract (RCW 61.38.010).'

The workgroup conducted outreach using surveys and holding listening sessions. They researched by reviewing legislation passed in other states, Attorneys General lawsuits, a Washington future listing right purchase contract, and news articles. The research and data informed the workgroup's recommendations for consumer protections and regulations.

Future listing right purchase contracts have gathered national attention. The contracts have led to 10 state Attorneys General filing complaints and 30 states, including Washington, passing legislation to address these contracts.

Attorneys General investigations showed providers of these contracts deceived customers, made false and misleading representations, and aggressively targeted lower-income individuals, the elderly, people of color, and people with disabilities. The various pieces of legislation from 30 different states addressed the time length of contracts, whether a contract is unfair or has prohibited terms, prior contracts, recording, remedies, enforcement, and other areas.

The workgroup sent out surveys and held listening sessions to conduct outreach and gather feedback from licensing partners. Surveys were sent to those who provide future listing right purchase contracts and those who have had a client sign a contract. Two listening sessions were held with minimal participation among licensing partners.

Recommendations:

The workgroup developed a series of recommendations to regulate future listing right purchase contracts and protect consumers from a potentially predatory practice. The recommendations include considerations for future contracts, considerations for prior contracts, and additional items to consider.

Recommendations include:

1. Contracts should be called 'Future listing right contracts' rather than the current term 'future listing right purchase contracts.'
2. Time length should be shortened from five years to one year.
3. Contracts shall not be binding or enforceable at law or in equity against any subsequent heir, contracts cannot be used as a lien, encumbrance, or other real property security interest, and no contract can be assigned to a third-party.
4. Contracts cannot be used as a lien so a person cannot record or cause to be recorded a future listing right purchase contract. If a contract is recorded, it does not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.
5. If recording officers are presented with a future listing right purchase contract that they record, they should not be liable for recording the contract.
6. Any provision of an agreement, whether or not it is recorded, that violates the prohibited terms should be void and unenforceable.
7. The homeowner must be notified when a contract is terminated.
8. Contracts should be formatted so they can be easily reviewed by a consumer, including a legible font and font size.
9. Future listing right purchase contracts must not be advertised or marketed in a false or misleading manner.
10. It should be clarified that future listing right purchase contracts are 'real estate brokerage services' ([18.85 Real estate brokers and managing brokers - 18.85.011 Definitions](#)) and 'real estate transactions' ([18.86 Real estate brokerage relationships - RCW 18.86.010 Definitions](#)).
11. Any disputes related to contracts should be governed by Washington law. The contracts should also provide the same type of legal recourse and remedy options as provided for in other Washington listing agreements. Waiving consumer rights and similar provisions should be prohibited.
12. This legislation should be retroactively applied to existing contracts, agreements, and notices or memorandums of agreements, entered or recorded prior to the effective date of the legislation.

13. In the event a lienholder for future listing right purchase contracts dissolves or ceases to exist in Washington, there should be a provision for liens to be removed. The lien holder can voluntarily void the lien within a certain number of days or else the county clerk has the power to void the lien upon request.
14. The Consumer Protection Unit at the Attorney General's Office should discover who is the targeted audience and if there is outreach and education that can be provided to this demographic.

Findings

There are nearly 1,000 future listing right purchase contracts in Washington. There are two main brokerages offering these contracts.

A single brokerage holds the majority of future listing right purchase contracts in Washington. They use a two-prong model, providing brokerage services and future listing right purchase contracts.

The process:

- Broker cold-calls a homeowner ten times attempting to get the homeowner to sign a future listing right purchase contract.
- If the homeowner didn't sign a contract after ten calls, another broker would call the same homeowner up to ten more times.
 - The process would repeat indefinitely.
 - There are reports of brokers making up to 450 phone calls a day.

Additional Findings:

- The Washington State designated broker was not signing the future listing right purchase contracts. Instead, executives outside of Washington signed the contracts.
- The Washington State designated broker is not involved in the process until the future listing right purchase contract is transferred to a listing agreement.
- Liens can only be released by a corporate signer.
- The brokerage filed for bankruptcy in September of 2023, claiming all contracts as assets. They withdrew the petition for bankruptcy in May of 2024.
- The Federal Communications Commission (FCC) issued a [cease-and-desist](#) to PhoneBurner and Twilio to stop allowing robocalls from the brokerage. The FCC's Enforcement Bureau identified 11,949,374 calls made to Do Not Call – registered numbers.

The second brokerage does not have an office or physical location in Washington. They operate using referral fees and referral agents. They are not currently operating in Washington with the passage of SSB 5399.

Their process is:

- Sell a future listing right purchase contract to a homeowner.

- Brokerage hires an agent to sell the home.
- Brokerage onboards the agent so they can sell the home.
- Once the home is sold, the commission is split between the brokerage and the agent.

Future Listing Right Purchase Contract

By signing this future listing right purchase contract, the homeowner agrees that the brokerage has the exclusive right to act as the listing agent. The homeowner shall not engage, hire, or otherwise employ any other real estate brokerage, licensed broker, or sales agent to market the property, including for sale by owner. The homeowner may not assign the rights, duties, obligations, and privileges in the contract without prior consent.

The brokerage receives 6% of the total sale price or the original evaluation, whichever is more, even if the property is sold without involving the brokerage or a cooperating broker. If a cooperating broker is involved, the brokerage receives 3% of the total sale price or the original evaluation, whichever is more.

If the homeowner sells in compliance with the contract or ceases to own the property, the brokerage will, upon written request, deliver a Notice of Termination of the Memorandum, in recordable form, to the closing agent or the purchaser.

The agreement:

- Constitutes a covenant running with the land.
- Binds future successors in interest to title to the property. The contract is binding on the homeowner's personal representatives, heirs, administrators, successors, and assignees.
- If a homeowner defaults, any amount owed to the brokerage shall be secured by a security interest and lien.
- The homeowner agrees that the brokerage may transfer or assign some or all rights, including the right to receive the commission or early termination fee. Then brokerage reserves the right to record a memorandum of the contract.

The contract is in effect until the property is sold and the commission is paid or 40 years after the effective date of the contract, whichever is earlier, unless there is an 'Early Termination Event.' An 'Early Termination Event' includes:

- A sale or other transfer of the property that results in the brokerage not receiving commission.
- The homeowner terminates or attempts to terminate the contract.

Transfer of property to a spouse, heirs, devisee(s), or for estate planning purposes does not constitute an Early Termination Event if the transferee assumes the original contract agreement and is bound with the same effect as the original homeowner.

Should any listing agreement expire or terminate without the commission payment to the brokerage, they shall retain exclusive listing rights for any future listing. At the expiration of

the term, the contract terminates without prior notice. If the homeowner fails to perform obligations or there is an Early Termination Event, the homeowner must pay 3% of the original evaluation or 3% of the fair market value at the time of contract breach or termination, whichever is greater.

Within this agreement, the homeowner agrees the brokerage may utilize:

- Any photographs, descriptions, and renderings generated in relation to the contract in their general marketing initiatives and efforts.
- The homeowner's likeness or image in any materials promoting, advertising, or marketing the brokerage's business or services. The homeowner expressly releases any claim relating to the use of image or likeness, including any right to publicity relating to the same.

To sign a contract, homeowners must agree to waive their right to a jury trial, class action relief, and other actions. If a dispute, claim, or controversy arises from the contract the homeowner and the brokerage must participate in arbitration. The arbitrator can award the same damages and relief a court can reward, including compensatory damages. They cannot award punitive damages.

The contract states, "even if an applicable law provides otherwise, homeowner waives all rights to be a part of a class action, private AG action or other representative action and homeowner agrees that all disputes with the brokerage or relating to the contract shall only be resolved by the homeowner and brokerage in arbitration."

Attorneys General Lawsuits

As of June 2024, ten state Attorneys General have filed complaints over future listing right purchase contracts including, [California](#), [Florida](#), [Georgia](#), [Indiana](#), [Massachusetts](#), [Missouri](#), [New Jersey](#), [North Carolina](#), [Ohio](#), and [Pennsylvania](#). Investigations showed providers of these contracts deceived customers, made false and misleading representations, and aggressively targeted lower-income individuals, the elderly, people of color, and people with disabilities.

Consumers were targeted using websites, social media, and telemarketing campaigns, including calling those on the Do Not Call Registry. Agreements were promoted as a way to get cash without borrowing and without any risk.

Marketing phrases included:

- Help for seniors with home repairs.
- You NEVER repay these funds.
- Government Home Improvement grant.
- Because it's not a loan, there is NO repayment.

Once a homeowner was identified, they barraged consumers with phone calls, emails, and text messages. They rushed people into contracts and concealed things from homeowners including:

- Signed contracts with 40 years in length.
- A lien would be placed on the homeowner's property.
- A cancelation penalty.
- A penalty for using a different service provider.
- State mandated information, which varied by state.

Mobile notaries were sent to notarize and collect signatures, without an attorney present and without materials being provided in advance for consumers to read. Contracts used 8.5pt font and consumers didn't receive a copy after signing. Executives, who were not licensed in the states where the agreements took place, were signing agreements.

Initial payments made to homeowners ranged from \$300-\$5,000. In the event the homeowner canceled the contract or used another service provider, brokerages can collect a payment of at least 10 times the amount of the initial payment. If an heir to the home won't assume the contract, brokerages could foreclose on the property.

States are seeking to:

- Discharge all liens.
- Declare all agreements void and unenforceable.
- Provide restitution.
- Pay penalties and fines.
- Permanently ban defendants from operating in states.

Legislation

With the knowledge of future listing right purchase contracts spreading, states have begun taking action. Over half of the country, thirty states have passed legislation to address these contracts. Legislation has addressed a wide range of areas to regulate these practices and protect consumers.

Illinois updated their [Real Estate License Act of 2000](#) (225 ILCS 454/10-25) and passed [legislation](#).

Three states including Idaho state no waivers that remove consumer rights be included in future listing right purchase contracts. Twenty-three states, including [Alabama](#), Hawaii, [Iowa](#), and [West Virginia](#), say these contracts are unlawful, a deceptive practice, or violates an act.

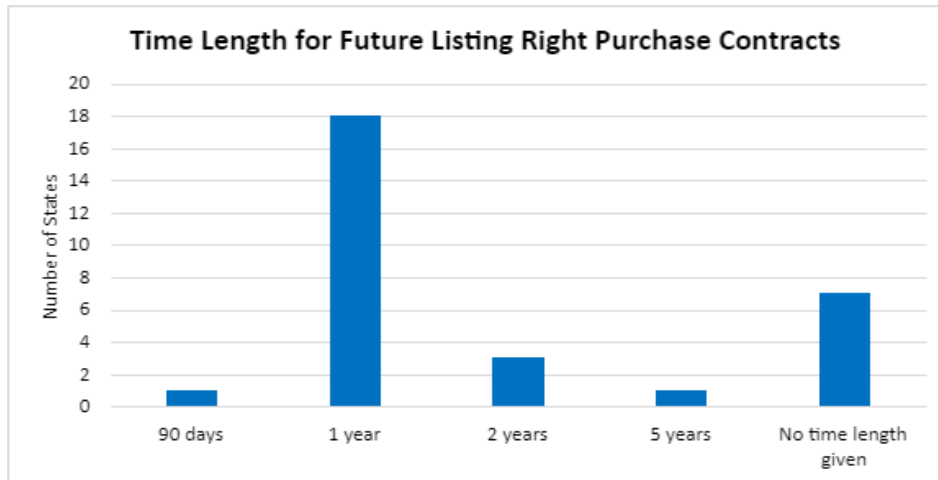


Figure 1. The number of states, who have passed legislation, that have a time length for future listing right purchase contracts in other states.

The majority of states that passed legislation have a one-year contract term. However, if services don't begin within 90 days, such as in [Florida](#), the future listing right purchase contract is void. A couple of states have a two-year time length for contracts including, [California](#).

While most states introduced time lengths for future listing right purchase contracts seven states did not, including, [Colorado](#), [Georgia](#), [Nebraska](#) (16)(a), [Ohio](#) (Sec. 5301.94), and [Utah](#).

Besides the states with passed legislation that don't include a time length for contracts, [Washington](#) has the longest time length at five years.

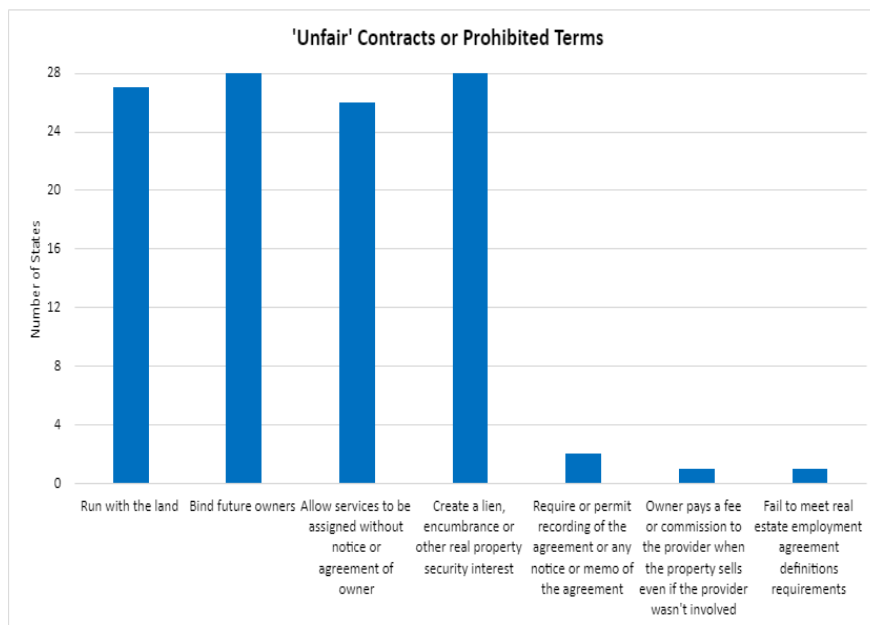


Figure 2. Number of states that included certain prohibited terms or terms in unfair contracts.

Most states, including, [Maryland](#), [North Dakota](#), [Oregon](#) (Section 21), Pennsylvania, and [South Carolina](#), prohibited terms such as: running with the land, binding future homeowners, allowing services to be assigned without notice or agreement of homeowner, and creating a lien, encumbrance or any notice or memo of the agreement.

Some states included other stipulations in the prohibited terms or what constitutes an unfair contract. For example, [Minnesota](#) (Sec. 82. [513.80]) prohibited requiring or permitting the recording of the agreement and any notice or memo of the agreement. [Maine](#) prohibited the homeowner paying a fee or commission to the provider when the provider wasn't involved in the sale of the property.



Figure 3. Number of states that don't allow a person to record, or cause to be recorded, a contract and the number of states where a register can refuse recording.

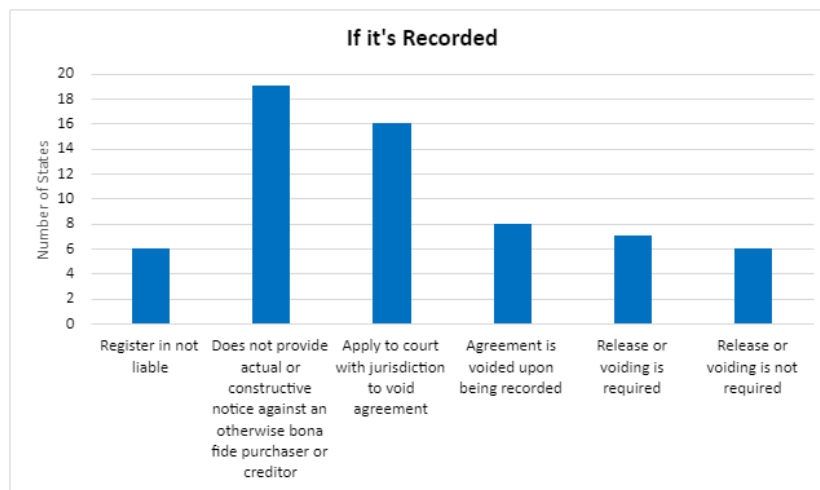


Figure 4. Number of states that engage in the listed practices if a contract is recorded.

Six states say a register is not liable for recording a future listing right purchase contract including, [Indiana](#), [North Carolina](#), [Oklahoma](#), and Tennessee.

Five states use legislation to address prior contracts:

- [Kentucky](#)
 - Retroactively applied to service agreements, and notices or memorandums of service agreements, entered or recorded prior to the effective date of this Act;
 - Prospectively applied to service agreements, and notices or memorandums of service agreements, entered or recorded on or after the effective date of this Act.
- [Arizona](#)
 - A contract or agreement that violates this chapter and that is recorded before the effective date of this section is void.
 - The state real estate commissioner shall execute and record in the office of the county recorder in each county in this state a document that disclaims the validity and enforceability of the contract or agreement or any related liens or assignments that violate this chapter.
 - The state real estate department shall display on its website the documents that the state real estate commissioner has executed and recorded pursuant to this subsection.
- [Virginia](#)
 - Assignment or transfer of the right to provide services under a real estate service agreement recorded prior to July 1, 2024, that would otherwise be in violation of subsection A of § 55.1-3202, is prohibited without notice to and written agreement of all parties to the service agreement.
- [Connecticut](#)
 - Not later than July 31, 2024, each real estate listing provider who entered into a real estate listing agreement on or before June 30, 2024, shall rerecord such agreement, and record notice of such agreement with certain descriptors, with the town clerk of the town in the residential real property that is located.
 - If a real estate listing provider fails to rerecord any real estate listing agreement, and record a notice of such agreement, on or before July 31, 2024, such agreement shall be void and unenforceable and any interest in the residential real property may be conveyed free and clear of such agreement.
- [Nevada](#) (Sec. 16.3.)
 - On or before July 31, 2023, a service provider that has entered into a service agreement on or before the effective date of this act shall record a notice of service agreement, with certain descriptors, with the county recorder in the county where the real property is located.
 - If a service provider fails to record the notice the service agreement is declared void and unenforceable and any interest in the real property that is subject to

the service agreement may be conveyed free and clear of the service agreement.

Surveys

The workgroup sent out surveys to gather feedback from real estate licensing partners. They were sent via Listserv, Northwest Multiple Listing Services (NWMLS), and Washington Realtors. Surveys were for those who provide future listing right purchase contracts and those who had a client sign a contract.

Survey results for those that provide future listing right purchase contracts:

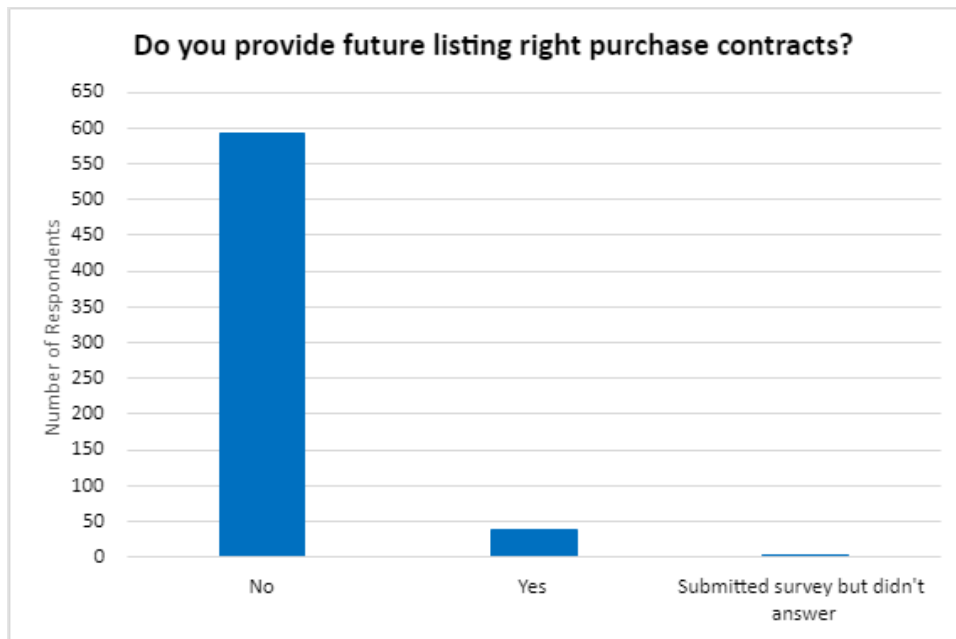


Figure 5. Number of respondents that provide future listing right purchase contracts.

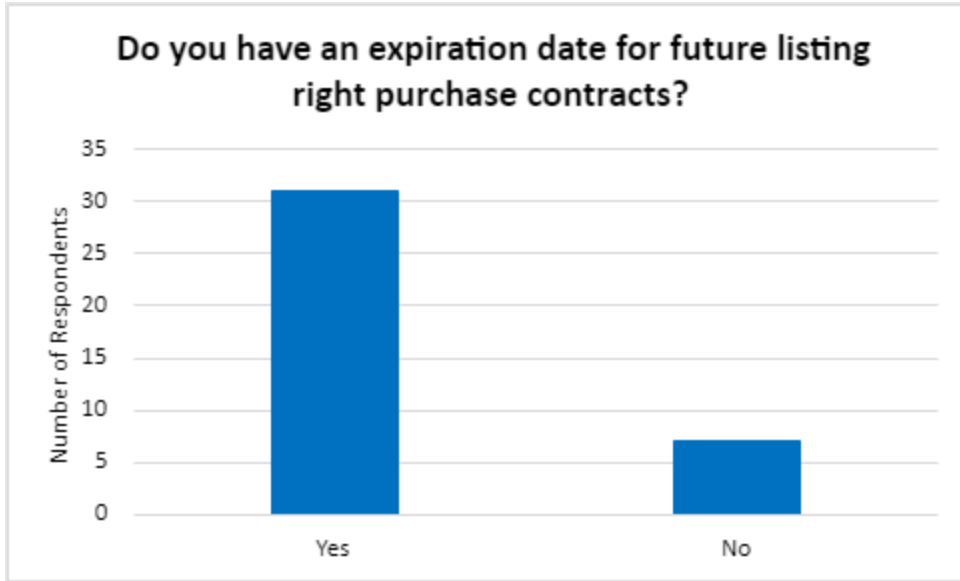


Figure 6. Number of respondents that have an expiration date in their future listing right.

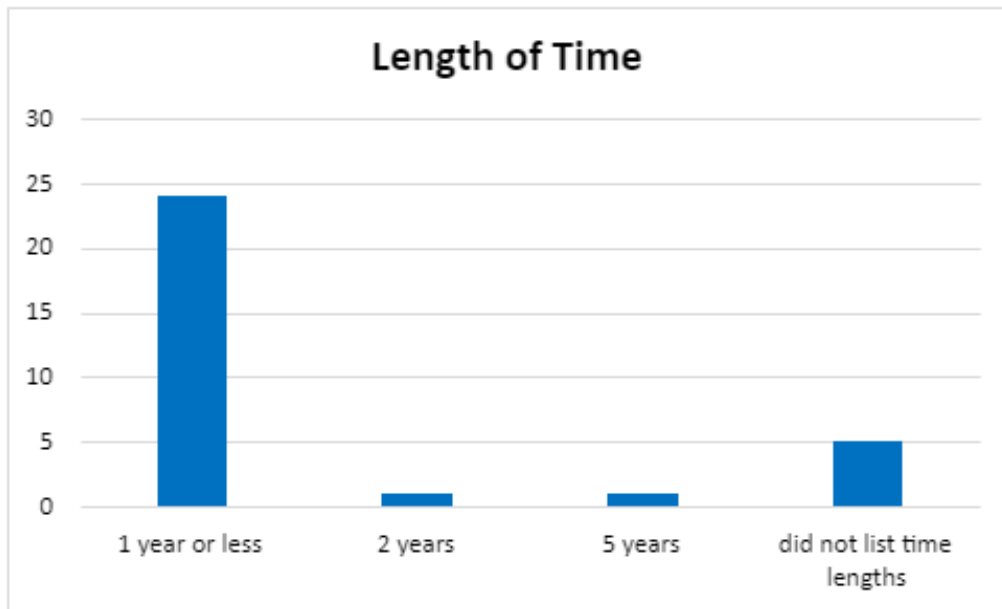


Figure 7: Table shows that 63% of survey respondents who provide for future listing right purchase contracts indicated they have future listing right purchase contracts with a time length of one-year or less.

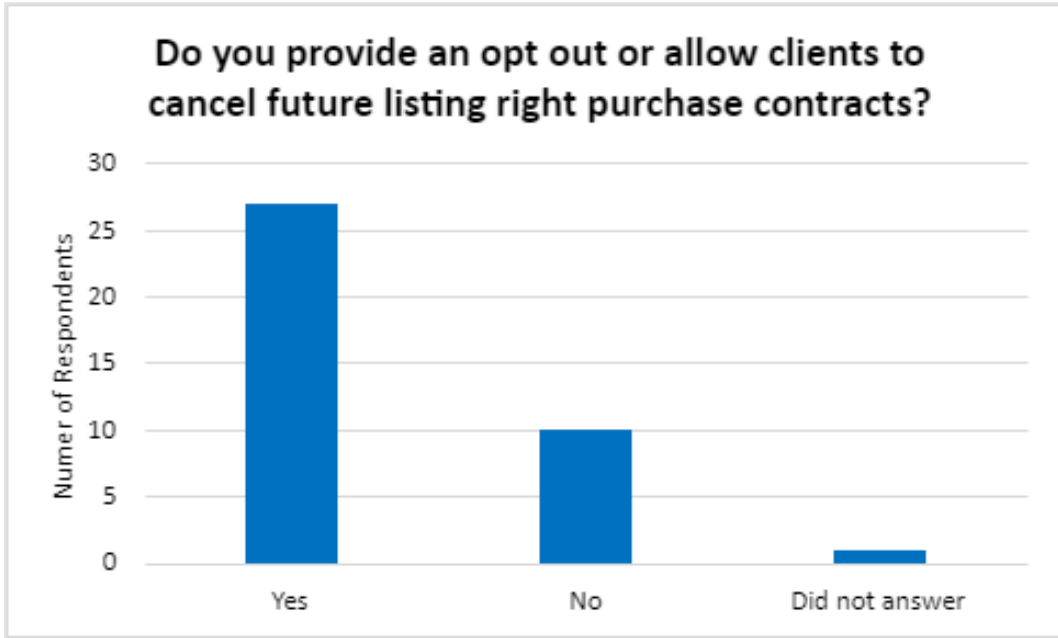


Figure 8. Number of respondents that provide an opt out or allow clients to cancel their future listing right purchase contract.



Figure 9. Number of respondents that allow services to be assigned to a third party during the contract terms.

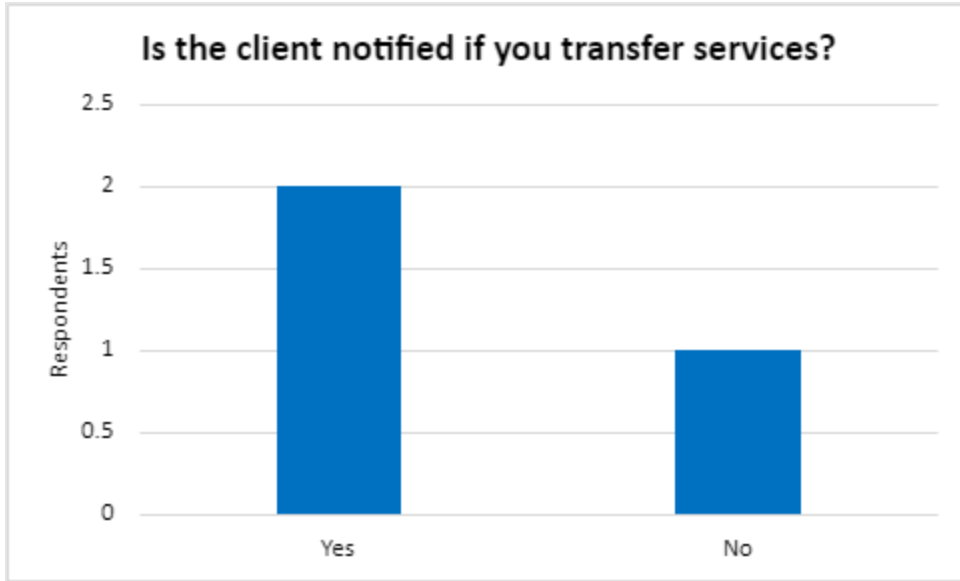


Figure 10. Number of respondents that do or do not notify their client if they transfer services.

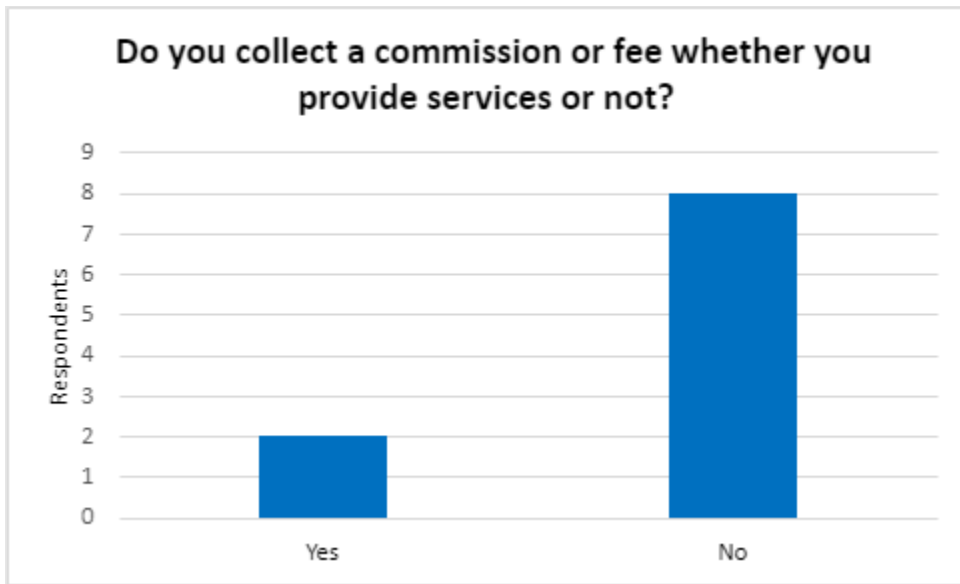


Figure 11. Number of respondents that collect a commission whether or not they provide services.

Survey results for those who do not provide future listing right purchase contracts but have had a client who signed one with another party:



Figure 12. Number of respondents that have a client who did or did not sign a future listing right purchase contract.

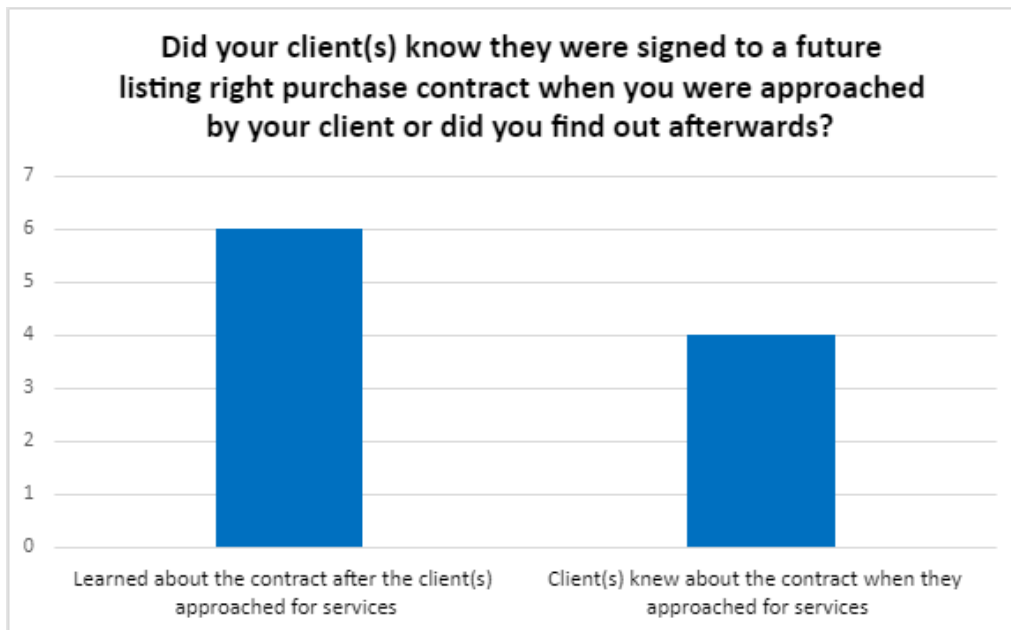


Figure 13. How many respondents had clients that knew about the contract before approaching for services and the number of respondents that learned about the contract after the client approached for services.



Figure 14. The number of respondents that were or were not able to provide services to their client that signed a future listing right purchase contract.

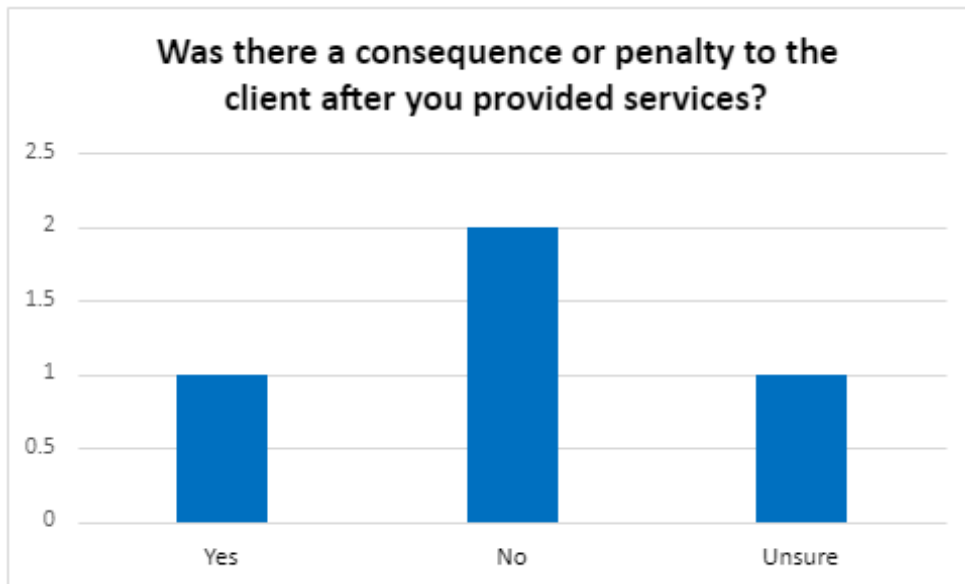


Figure 15. Number of respondents whose clients received a penalty after the agent/broker provided services.

Listening Sessions

The workgroup held listening sessions to gather feedback from licensing partners and the public. Information for the sessions was sent via Listserv, NWMLS, and Washington Realtors. There was minimal participation among real estate licensing partners and the public, but the commission received one comment about how this could potentially impact listing

authorizations for new construction when a builder has an agreement with a listing broker for future listings. The workgroup spoke with NWMLS, who was working to ensure listing authorizations comply with the legislation.

Recommendations

Based on the workgroup's research, analysis, and after consultation with Washington Realtors and NWMLS, the following recommendations are submitted for consideration regarding future listing right purchase contracts. The workgroup did not identify the need for additional licensing requirements due to future listing right purchase contracts being a listing agreement.

Considerations for Future Contracts

1. Contracts should be called 'Future listing right contracts' rather than the current term, "future listing right purchase contracts.' We received feedback that the 'purchase' in future listing right purchase contracts led people to believe a purchase had to take place for the contract. The workgroup also got the impression licensing partners were confused about the contracts when outreach first began.
2. Time length should be shortened from five years to one year to prevent consumers from entering into lengthy agreements and reduce consumer risk. In our research, 63% of states that passed legislation had a contract time length of one year or less. In our survey responses, 77% of respondents who provide contracts state their contracts have a time length of one year or less.
3. A future listing right purchase contract states that the contract is binding on heirs, and it can be used as a lien, encumbrance, or other real property security interest. It also states the brokerage can assign part of or all of the contract to a third party. The workgroup recommends that contracts not be binding or enforceable at law or in equity against any subsequent heir, contracts can not be used as a lien, encumbrance, or other real property security interest, and that no contract can be assigned to a third-party as it's believed this is designed to circumvent the law.
4. Contracts cannot be used as a lien so a person cannot record or cause to be recorded a future listing right purchase contract. If a contract is recorded, it does not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.
5. Recording officers have a duty to record ([RCW 65.08.150: Duty to record](#)). If they are presented with a future listing right purchase contract that they record, they should not be liable for recording the contract.

6. Based on the findings, the workgroup believes these contracts pose a risk to the public. Because of this, any provision of an agreement, whether or not it is recorded, that violates the prohibited terms should be void and unenforceable.
7. The brokerage of the future listing right purchase contract reserves the right to not notify the homeowner if the contract is terminated. This is perceived to be predatory. Therefore, the workgroup recommends the homeowner must be notified when a listing contract is terminated.
8. Future listing right purchase contracts have a perceived unfairness. The workgroup identified concerns related to the format and language used in these contracts, often provided to clients in small font using legal language. It's not clear to what extent homeowners can read and understand these contracts. The workgroup recommends contracts should be formatted so they can be easily reviewed by a consumer, including a legible font and font size.
9. Future listing right purchase contracts must not be advertised or marketed in a false or misleading manner. Contracts have been advertised using false and misleading terms like:
 - Help for seniors with home repairs.
 - You NEVER repay these funds.
 - Government Home Improvement grant.
 - Because it's not a loan, there is NO repayment.
 - There is no repayment obligation (the money is yours to keep).
10. Currently, individuals who are not licensed as real estate brokers in Washington are signing future listing right purchase contracts. It should be clarified that future listing right purchase contracts are 'real estate brokerage services' ([18.85 Real estate brokers and managing brokers - 18.85.011 Definitions](#)) and 'real estate transactions' ([18.86 Real estate brokerage relationships - RCW 18.86.010 Definitions](#)) so Washington licensees are the ones to enter into these contracts with consumers.
11. Since it's recommended that only Washington licensees enter into future listing right purchase contracts, any disputes related to contracts should be governed by Washington law. The contracts should also provide the same type of legal recourse and remedy options as provided for in other Washington listing agreements. Consumers signed away their rights to a jury trial, class action, Attorney General action, or other representative action, and were forced into arbitration if a dispute arose. These and similar provisions should be prohibited.

Considerations for Prior Contracts

1. Contracts currently exist with 40-year expiration terms or less. These consumers, particularly those in 40-year contracts, are the most harmed when it comes to future listing right purchase contracts. This legislation should be retroactively applied to existing contracts, agreements, and notices or memorandums of agreements, entered or recorded prior to the effective date of the legislation.
2. A corporate signer is required to remove the lien. In the event a lienholder for future listing right purchase contracts dissolves or ceases to exist in Washington, there should be a provision for liens to be removed. The lien holder can voluntarily void the lien within a certain number of days or else the county clerk has the power to void the lien upon request.

Additional Considerations

The workgroup perceives this to be a predatory market based on findings. With no participation in surveys or listening sessions from Washington's two main future listing right purchase contract providers, the Consumer Protection Unit at the Attorney General's Office should discover who is the targeted audience and if there is outreach and education that can be provided to this demographic.