

Legislative Analysis



PROHIBIT LAWSUITS FOR UNSIGNED REAL ESTATE CONTRACTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 253 as reported from House committee
Sponsor: Sen. Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 3-3-20

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 63 of 2020)

SUMMARY:

Senate Bill 253 would amend Chapter 81 of the Revised Statutes of 1846 to prohibit a person from bringing an action to enforce an unsigned agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate against the owner or purchaser of the real estate.

Currently under the law, certain agreements, contracts, and promises are void unless the agreement, contract, or promise, or a note or memorandum of it, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise.

This legal principle is commonly known as the “statute of frauds” and includes an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate.

The bill would amend these provisions to further state that a person could not bring an action to enforce an agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate against the owner or purchaser of the real estate unless the agreement, promise, or contract is in writing signed by the party to be charged.

MCL 566.132

BRIEF DISCUSSION:

During House committee testimony, the sponsor testified that the bill is intended to address a recent Michigan case that applied the doctrine of promissory estoppel over the statute of frauds in a real estate issue.

Promissory estoppel is a doctrine in contract law that allows for the enforcement of a promise that a party relied on to guide his or her actions, to his or her subsequent detriment, even if a legal contract does not exist. The Michigan Supreme Court recently described the historical relationship between the statute of frauds and the doctrine of promissory estoppel as follows:

From the very beginning of British jurisprudence relating to the statute of frauds, British courts have applied equitable rules to enforce promises that induced a party to act in reliance... The British Court of Chancery would regularly apply these equitable rules, particularly equitable estoppel and specific performance, “if insistence on the letter of the statute would facilitate a fraud.”... From its inception, then, there was agreement that exceptions to the statute of frauds were needed in order to prevent the

statute itself from perpetuating frauds. The trend crossed the pond. Today, promissory estoppel is employed in every variety of United States court. *N. Am. Brokers, LLC v. Howell Pub. Sch.*, 502 Mich. 882, 913 N.W.2d 638, 639, *reconsideration denied*, 503 Mich. 854, 915 N.W.2d 886 (2018).

Supporters of the bill argued in House committee that the statute of frauds protects buyers and sellers from anyone coming forward claiming compensation under a contract to which he or she was not a party and makes it easier to know what is owed to whom without the fear of noncontractual parties claiming that different compensation is owed.

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported the Senate-passed version of the bill without amendment.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or on local units of government.

POSITIONS:

A representative of the Michigan Realtors Association testified in support of the bill.
(2-4-20)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.