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FISCAL IMPACT REPORT

SPONSOR <u>Ortiz y Pino</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/28/23</u>
SHORT TITLE <u>Real Estate Agent Contract Act</u>	BILL NUMBER <u>Senate Bill 449</u>
	ANALYST <u>Hitzman</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
Mortgage Finance Authority (MFA)

No Response Received
Department of Finance and Administration (DFA)
County Clerks Affiliate (CCA)

SUMMARY

Synopsis of Senate Bill 449

Senate Bill 449 (SB449) adds new material to the state statute to be called the Real Estate Contract Act, providing definitions for “buyer,” “date of sale,” “down payment,” “dwelling,” “real estate contract,” and “seller.”

The bill requires the seller to record a real estate contract (a direct agreement between a seller and a buyer that does not involved a mortgage company) with the county clerk within 30 days of the sale or transfer of interest. Failure to record the contract grants the buyer the ability to terminate the contract without penalty until it is recorded and all payment shall be returned in full. If not recorded and title to the property becomes clouded for any reason, the buyer can terminate the contract within 90 days of discovering the cloud on the title and receive reimbursement of any payments, including if another person buys the property, a judgment lien is placed on the property or a consensual mortgage or some other third-party interest affects the title. A buyer may also be awarded civil damages not to exceed \$50 per day, not requiring proof of damages or intent to deceive.

The bill requires the county clerk to record contracts even if beyond the 30 days of sale. For contracts executed before July 1, 2023, the seller has until November 1, 2023, to record the contract. Failure to do so would allow the buyer to pursue remedies described above. Real estate contracts entered into before July 1, 2023, shall not be subject to the provisions of the Real Estate Contract Act until November 1, 2023.

Relating to mortgages, SB449 prohibits the seller from obtaining a mortgage for any property sold pursuant to a real estate contract in any amount greater than the balance due to pursuant to the contract, or that requires payments in excess of what is owed on the contract. Additionally, the seller cannot mortgage any interest in the subject property after the contract is executed without the express permission of the buyer.

Prior to the initiation of any action to enforce a real estate contract due to an alleged default, a seller shall provide the buyer written notice and give the buyer 30 days to cure an alleged default.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The bill does not contain an appropriation and is unlikely to have any fiscal impact on the state or state agencies. However, counties may experience an influx in submissions of real estate contracts because the bill requires all contracts established prior to July 1, 2023, be filed by November 1, 2023.

SIGNIFICANT ISSUES

The Mortgage Finance Authority (MFA) provides the following:

Real estate contracts provide an alternative financing option for a home purchase and can help a buyer who may not qualify for a conventional mortgage. Real estate contracts have little or no closing costs and fewer qualification requirements, however, they have fewer consumer protections than traditional mortgages. A seller retains all rights to the subject property until the final payment is made.

However, because the bill requires contracts be recorded by certain deadlines and provides some civil penalties and ways for a buyer to recoup costs, this bill could be seen as a way to expand those consumer protections in cases where a seller has not met its obligations.

The bill requires the county clerk to record contracts even if not presented within 30 days of the sale, and later requires all recording to take place by November 1, 2023, for those executed before July 1, 2023. If not filed by that date, the buyer can terminate the contract and receive reimbursement, but it is unclear if, in cases where the buyer does not terminate the contract or seek other remedies, the contract can still be recorded beyond the November 1, 2023 deadline. The bill places the responsibility on the buyer to initiate remedies, so it is unclear to what extent individuals will be aware of these new provisions and pursue such remedies.

JH/rl/hg