

LAWS OF DELAWARE  
VOLUME 85  
CHAPTER 274  
153rd GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 201

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REAL ESTATE BROKERS AND SALESPERSONS

WHEREAS, the practice of marketing the buyer's interest in an Agreement of Sale for real estate needs to be clarified as part of providing real estate services and requiring this to be done by a real estate licensee so it can be regulated by the Delaware Real Estate Commission to protect the public. This practice is often called "wholesaling." This bill adds requirements to protect members of the public entering into a wholesaling transaction; and

WHEREAS, the Delaware Real Estate Commission administers a Guarantee Fund to protect consumers; however, the amount they can award to an individual member of the public is insufficient to compensate for the harm suffered. An increase from \$25,000 to \$50,000 will help to protect consumers.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend subsection (e)(1) § 2901, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2901 License requirements; exemptions.

(e) This chapter shall not apply to:

(1) Any person or a subsidiary or division thereof with common ownership or control who, as owner or lessor, ~~or~~ buyer or lessee, or equitable owner of an interest in an Agreement of Sale not engaged in wholesaling as a business, performs any of the acts enumerated in this section with reference to property owned, purchased, ~~or~~ leased by such person or a subsidiary or division thereof with common ownership or control or to the regular employee of such person, with respect to the property so owned, purchased or leased, where such acts are performed in the regular course of or as an incident to the management of such property and the investment therein; or

Section 2. Amend § 2902, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2902 Definitions.

(21) "Real estate services" means those activities performed by a licensee as defined in this chapter. As promulgated under the rules and regulations, real estate services ~~shall~~ also include the marketing and advertising of properties for sale or lease. Real estate services also include wholesaling or attempts to engage in a wholesale transaction as defined in this chapter whether for the person or for others.

Section 3. Amend § 2902, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(27) a. "Wholesaling" or "wholesale" means any of the following activities:

1. The business of seeking to enter into a contract with an owner of real estate with an intent to make a profit by marketing and advertising for the assignment of an equitable interest in an agreement of sale as the buyer.

2. The business of marketing and advertising for the assignment of an equitable interest in an agreement of sale as the buyer.

b. "Wholesaling" applies only to property with the primary use as a 1-to-4 family residential property prior to taking legal ownership or a single lot of land zoned as residential available for development for a 1-to-4 family residence and does not apply to the assignment of a bid made at an auction by a sheriff, bankruptcy trustee, or partition auction sale.

Section 4. Amend § 2922, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2922 Real Estate Guaranty Fund.

(a) The Commission shall establish and maintain a Real Estate Guaranty Fund (hereinafter referred to as the "Fund") from which, subject to this section, any person who obtains a final judgment against a licensee or brokerage organization for loss

or damage sustained by reason of theft or forgery (as defined in Title 11) or by reason of any fraud, misrepresentation or deceit by or on the part of any such licensee or any employee or owner of a brokerage organization thereof who does not hold a license; but engaged in real estate services or was involved with a real estate transaction, may recover, after a hearing and on order of the Commission, compensation in an amount not exceeding in the aggregate the sum of ~~\$25,000~~ \$50,000 in connection with any 1 transaction or claim, regardless of the number of persons aggrieved or parcels of real estate involved in such transaction or claim.

(b) If the aggrieved person obtains a final judgment against a licensee or brokerage organization for loss or damage sustained by reason of theft or forgery (as defined in Title 11) or by reason of fraud, misrepresentation or deceit by or on the part of such licensee or employee thereof or owner of a brokerage organization who does not hold a license; but engaged in real estate services or was involved with a real estate transaction, such aggrieved person may file a verified claim with the Commission seeking an order directing payment from the Fund of any amount unpaid upon the judgment, subject to the limitations stated in subsection (a) of this section and this subsection. The verified claim shall be filed within 60 days after the final judgment has been obtained. The verified claim shall include a copy of the complaint, counterclaim or cross-claim, if any, a certified copy of the judgment, and copies of any documentation relating to steps taken to collect on the judgment. The Commission shall proceed upon such claim in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show all of the following:

(1) That the aggrieved person is not a spouse of the judgment debtor or the personal representative of said ~~spouse~~; spouse.

(2) That the aggrieved person has complied with all the requirements of this ~~section~~; section.

(3) That the aggrieved person has obtained a final judgment as set out in this subsection, stating the amount thereof and the amount owing thereon at the date of the filing of the aggrieved person's verified ~~claim~~; and claim.

(4) That the aggrieved person has fully diligently pursued and exhausted all ~~available~~ reasonable remedies and taken all reasonable steps within the discretion of the Commission to collect the amount of the judgment, stating the total amount collected.

(i) The Commission shall, at all times, maintain the Fund at a level in excess of ~~\$250,000~~ \$350,000, and to this intent all moneys received pursuant to subsection (g) of this section shall be credited to said Fund and held in a special account other than the General Fund prescribed by § 6102(a) of Title 29. Said account shall be an interest-bearing account and the interest accruing from the funds on deposit shall be added to the principal. Interest in the account shall be credited to the Commission to defray the costs of administering the Fund; as approved by the Commission. Interest and principal in the account in excess of \$250,000 \$350,000, upon a motion approved by vote of the Commissioners, shall be used for seminars within the State and for continuing education for licensees within the State; and to reimburse Commissioners, their administrative staff and legal counsel for membership in Association of Real Estate License Law Officials and expenses paid to attend in person or online meetings of the Association of Real Estate License Law Officials. The division shall provide a quarterly statement to Commissioners at their regular meetings detailing the amount in the fund, income, and disbursements.

Section 5. Amend Chapter 29 of Title 24 of the Delaware Code by inserting a new § 2940 as follows:

§ 2940 Requirements for Wholesaling.

Right to cancel agreement of sale or contracts for wholesale transactions.

(a) An owner of a fee simple or leasehold interest in real property who is party, as seller, in a wholesale transaction has the right to cancel an agreement of sale or contract that contains the information required under subsection (e) of this section until midnight of the 21st calendar day after the date when the consumer executed the agreement or contract, or until conveyance, whichever occurs first. An agreement of sale or contract for a wholesale transaction that does not contain the information required under subsection (e) of this section may be canceled at any time prior to conveyance. The right to cancel the agreement of sale or contract is not waivable.

(b) Notice of cancellation shall be given by certified return receipt mail or by any other bona fide means of delivery, including electronic delivery or personal delivery, provided that the consumer retains proof of sending. A notice of cancellation given by a bona fide means of delivery is effective on the date postmarked, the date of electronic transmission, the date of personal service, or on the date of deposit of the notice with any bona fide means of delivery.

(c) Within 10 business days after the receipt of a notice of cancellation, all payments of any kind made by the consumer must be refunded to the consumer and an acknowledgment that the agreement of sale or contract is void must be sent by the

broker or salesperson to the consumer. In the event of a cancellation under this section, any promotional prizes, gifts, and premiums issued to the consumer remain the property of the consumer.

(d) A consumer who exercises the right of cancellation is not liable for any damages as a result of the exercise of that right.

(e) An agreement of sale or contract for a wholesale transaction shall prominently include the following information which shall be disclosed in the manner and method that the commission shall establish by a form or forms approved by the commission and which shall be available in English, Spanish, and Haitian Creole:

(1) A statement that the agreement of sale or contract is for a wholesale transaction in which the licensee intends to assign, sell, or otherwise transfer the interest for a fee, commission, or other valuable monetary consideration without having taken title as the owner of record of the interest.

(2) A statement that the consumer has the right to obtain an appraisal of the property from a real estate appraiser and to consult with a real estate licensee not affiliated with the wholesaler's broker or to seek legal counsel from a Delaware lawyer before or after entering into the agreement or contract.

(3) A statement that the consumer has the right to cancel the agreement or contract until midnight of the 21st calendar day after the date when the consumer executed the agreement or contract, which included the required disclosure form, or until conveyance, whichever occurs first, by certified return receipt mail or by any other bona fide means of delivery, including electronic delivery or personal delivery, provided that the consumer retains proof of sending.

(4) A statement that within 10 business days after the receipt of a notice of cancellation, all payments of any kind made by the consumer shall be refunded to the consumer.

Section 6. Sections 1, 3, and 4 of this Act take effect upon enactment into law.

Section 7. Section 2 of this Act takes effect 270 days after its enactment into law.

Section 8. Section 5 of this Act takes effect 90 days after its enactment into law.

Approved June 1, 2026