



Andrea Meyer, Director of Government Relations

Testimony on HB 4058

House Committee on Housing & Homelessness

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AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With over 500,000 members in Oregon, AARP works to strengthen communities and advocate for what matters most to families. With a focus on health security, financial resilience, and livable communities. This includes educating and protecting older Oregonians against fraud and supporting legislation that advances important consumer protections.

I am here today on HB 4058, specifically Section 21, the "Future Right to List Contract." AARP has no position on the other part of the bill.

Section 21 addresses a new practice across this country. Several real estate companies have been using a predatory business model to target seniors and financially insecure homeowners. These companies cold call people providing cash payments, typically between \$300-\$3,000 to homeowners in exchange for agreeing to exclusively utilize that company's services to list their property at any time in the next 40 years.

The property owner agrees by signing a contract which includes a memorandum that is filed with the county as a lien on the property's title. The contract is binding on current homeowners and property heirs and the lien complicates the homeowner's ability to refinance, access home equity, or transfer their property. Property owners can terminate agreements early but must pay a penalty equal to 3% of the market value of the property (i.e., the commission the company would have earned for listing the home) and the company gets to determine the home's value pursuant to the contract.

AARP has worked closely with the national American Land Title Association to develop a shared model bill to stop this egregious practice across the country. We have been directly involved in all the efforts across the country, not totaling 25. Of those, 16 states have passed legislation to stop this practice based on our model bill, with very little variation. And it's worth noting that the states cover the political spectrum. This is truly a bi-partisan effort, indeed a non-partisan issue.

With this success and the trend to address this egregious practice, my colleagues at our national office reached out to urge Oregon to work on this because we learned that there are over 500 recorded liens on property as a result of this practice. However, I knew with the short

session around the corner and deadlines having come and gone, it would be very difficult if not impossible to convene all the relevant stakeholders and work through the details to come to consensus this year. Only by happenstance did I just learn that there was legislation already in the works. Unfortunately, it did not include AARP and unlike every other state, this bill approaches the problem in a very different and more limited way.

I am here today because I would be remiss if we did not share our concerns with the bill. It omits what we think are important safeguards. We are cognizant of both the importance of this legislation and the need to get it right.

We refer to these as Unfair Service Agreements. And the approach to legislation is to define what are Unfair Service Agreements and:

1. Make these agreements unenforceable
2. Restrict and prohibit the recording of these agreements in property records
3. Create penalties if these agreements are recorded in property records and
4. Provide for the removal of these agreements from property records and recovery of damages

HB 4058 does not specifically prohibit the contracts to run with the land thereby binding future successors and adding costs. It also does not specifically prohibit creating a lien, encumbrance, or other real property security interest on the property. Therefore, under this proposal it will still create a security interest in a homeowner's property, creating complexity and barriers to transferring or financing their property. It also does not bar assigning the contract without the homeowner's consent, which we believe should not be allowed.

We would much rather prefer to work from the model bill that lays out in clear language what is not allowed but in light of situation and what appears to be reluctance to consider the model bill, something that more than two dozen states have used, we have prepared language to be added to this language that would address our most critical concerns, leaving for 2025 to address what we think are critical other protections that need to be put in place but would require more time than is allowed.

With these changes, AARP would support HB 4058 and look forward to working with all parties and the Attorney General not only to address issues that may still be unresolved but also to help those more than 500 Oregonians who are currently victims of this unconscionable practice.

Below please find our recommended language to be added to Section 21 of HB 4058:

SECTION 21.

(1)(a) As used in this section, "future right to list contract" means a contract granting a right to list, or to refer to another for listing, 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.

(b) "Future right to list contract" does not include a will or trust instrument in which the testator or settlor instructs a personal representative or trustee to use the services of a particular real estate licensee or firm upon the death or incapacity of the testator or settlor.

(c) "Future right to list contract" will not:

- (i) purport to run with the land or to be binding on future owners of interests in the real property; or
- (ii) allow for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or
- (iii) purport to create a lien, encumbrance, or other real property security interest.

(2) A real estate licensee may not solicit, enter into or give or receive compensation arising from a future right to list contract if the duration of the contract, including any renewals thereof, exceeds 24 months.

(3) This section does not apply if the future right to list contract is entered into between a real estate licensee and a corporation, limited liability company or partnership and is for the right to list the real property of the corporation, limited liability company or partnership.

(4) Assignment or transfer of the right to provide services under a future right to list contract recorded prior to [effective date of this bill], that would otherwise be in violation of subsection 21 (1), is prohibited without notice to and written agreement of all parties to the service agreement.

(5) (a) No person shall record or cause to be recorded a future right to list contract in violation of subsection 21 (1) in this state.

(b) A county clerk's office shall refuse to accept for recordation a future right to list contract in violation of subsection 21 (1).

(c) In the event that a county clerk does accidentally record a future right to list contract in violation of subsection 21 (1), the county clerk shall incur no liability for doing so and no person shall have any claim for restitution and/or damages against that county clerk.

(d) If a future right to list contract in violation of subsection 21 (1), is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.