



# The Legal Edge

Current Topics in Real Estate

This course includes the 2018-2019 Core Curriculum

by  
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*A Washington State Approved Real Estate School for Clock Hour Education under R.C.W. 18.85.*



## Clockhours by Mail

1. You will be provided with a booklet of with the class material here in a pdf format. It is a 7.5 CLOCKHOUR CLASS. This class INCLUDES the 2018-2019 Core Curriculum
2. The course has been divided up into nine sections. In Washington State a “clock hour” is 50 minutes. There is a quiz at the end that can be answered as you read the material or after reading.
3. **Answer** the questions on the quiz sheet.
4. If you have any questions regarding the material or the questions, don’t hesitate to call or email Natalie Danielson.
5. **Email or Mail** Quiz and Evaluation to Professional Direction.
6. The certificate will be mailed or emailed within 10 days (**or much sooner!**)of receipt of course materials and handout. If you are desperate... just email us!!!!

Disclaimer.. the course materials and questions are not to be used for legal advice. Information can change over time. Real estate transactions are handled different ways in different regions in the State of Washington. If you have any comments or concerns about the material contact Professional Direction.

Thanks!

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# The Legal Edge... Current Legal Topics in Real Estate

## Includes the 2018-2019 CORE

### Curriculum

	Major Topics	Objective
<b>1</b> <b>30 min</b>	<b>Law of Agency</b> <b>Dual agency</b>	Recognize that language in the law of agency was updated to reflect the 2010 revisions to RCW 18.85 Explain that brokers are required to perform all agency duties under agency Law but not under fiduciary duties. Demonstrate how to create a dual agency relationship and understand disclosure
<b>2</b> <b>30 min</b>	<b>Organizational</b> <b>Structures, Roles,</b> <b>and Responsibilities</b>	Teams Independent Contractor Broker Safety Online Renewal Secret Listings
<b>3</b> <b>30 min</b>	<b>Legislative and Legal</b> <b>issues</b>	National Legislative Issues .. Marriage Equality, Home Ownership Counseling, VA Issues Know the legislative changes in WA State Homeless funding Excise Tax The Hirst decision regarding land development dependent on wells.
<b>4</b> <b>30 min</b>	<b>WA State Consumer</b> <b>Complaints</b>	Present all written offers Have a written transaction log Delegation of duties must be in writing
<b>5</b> <b>1 hour</b>	<b>Fair Housing and</b> <b>Anti Discrimination</b>	Review the Fair Housing/Anti discrimination laws and learn examples Be able to list the protected classes under different Federal and state laws. Identify the problems with "Love Letters" from the buyers to the sellers under discrimination laws Know that disciplinary actions could be taken under Wa licensing law.
<b>6</b> <b>30 min</b>	<b>Real Estate Practices</b>	Multiple Offers Builder Contracts Professional Cooperation

<b>7</b> <b>1 hour</b>	<b>Disclosure Buyer Beware</b>	Recognize the importance of inspections and the issue of Seller disclosure vx. Caveat emptor. Demonstrate how to make referrals to third party vendors to minimize risk Understand disclosure on Lead Paint, Mold and Geologic issues Understand flood insurance issues and insurance.
<b>8</b> <b>30 min</b>	<b>Use the Forms</b>	Discuss risk of unauthorized practice of law Under the Heritage House case
<b>9</b> <b>1 hour</b>	<b>Advertising and Social Media Guidelines</b>	Know the licensing law requirements for advertising and social media Explain "One Click Away" when it comes to disclosure with online advertising Identify issues and responsibilities when using third party websites. Watch video on Advertising guidelines
<b>10</b> <b>30 min</b>	<b>Risk Avoidance</b>	Flood Insurance Third party vendor referrals Signatory Authority
<b>11</b> <b>30 min</b>	<b>Property Management</b>	Know that brokers cannot perform property management without approval from designated broker Know that property management is a real estate activity Know the contracts and record keeping requirements and how trust funds are to be treated Identify which functions can be delegated
<b>12</b> <b>30 min</b>	<b>Fraud in Real Estate</b>	Know and identify red flags for fraud in real estate transactions.

# The Legal Edge

## Current Legal Topics in Real Estate

### Includes the 2018-2019 Core Curriculum

This is an overview of the most current legal issues in the real estate industry. There are changes happening constantly in all aspects of our business. This is an overview of the most current trends in the industry which also includes the current Core Curriculum and satisfies that requirement.

If you have legal questions, these must be directed to your Designated Broker or the corporate attorney.

#### Objectives

As a result of taking this class the agent shall be able to understand the most current legal topics in the following areas:

1. Law of agency
2. Organizational Structure
3. Legislative and legal update
4. Consumer Complaints
5. Fair Housing and Anti Discrimination
6. Real Estate Practices
7. Disclosure
8. Use the Form
9. Advertising
10. Risk Avoidance
11. Property Management
12. Fraud

# Chapter 1

## Law of Agency and Dual Agency Issues

### It's all in a Name

The majority of the changes to the Law of Agency that took effect in 2013, deal with the term change recognizing the licensee's status to reflect an agent's license as Broker, Managing Broker, Designated Broker and Branch Manager. The Law of Agency pamphlet for the consumers was changed to reflect the current real estate license terminology.

### What are Your Agency Duties?

The changes to the Law of Agency also state that brokers will only have statutory duties and not fiduciary duties in dealing with their clients. This eliminates any confusion. In 1996, the common law fiduciary duties owed by an agent were changed by the passage of the new chapter on real estate brokerage agency relationships. A number of duties concerning the relationship of an agent to the principal; buyer or seller, landlord or tenant, are set forth in statute. These statutory duties specifically superseded the common law rules applied to real estate licensees to the extent that they are inconsistent. Statutory duties allow brokers, consumers, and the courts to clearly understand an agent's role and responsibilities by listing them in the context of the Agency Law. Fiduciary duties of loyalty, confidence and trust are often hard to define so the laws more specifically identify the role and duties and agent has regarding their clients.

### The agency duties as outlined in the Law of Agency

#### Duties of licensee generally

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived: This means... you cannot have the seller or buyer agree that you are not going to be responsible for the following.

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- (e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in the statute to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights.

(g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable.

Unless additional duties are agreed to in writing, the duties of an agent are limited to the following. They cannot be waived except in section (e).

#### **Duties of a Seller's Agent**

- A. To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction.
- B. To timely disclose to the seller any conflicts of interest.
- C. To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise.
- D. Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship.
- E. Unless otherwise agreed in writing after the seller's agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that seller's agent shall not be obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.
- F. A seller's agent may show alternative properties not owned by the seller to prospective buyers and may list

#### **Duties of a Buyer's Agent**

- A. To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction.
- B. To timely disclose to the buyer any conflicts of interest.
- C. To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise.
- D. Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship.
- E. Unless otherwise agreed in writing after the buyer's agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that buyer's agent shall not be obligated to (i) seek additional properties to purchase while the buyer is subject to an existing contract to purchase, or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.
- F. A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any

competing properties for sale without breaching any duty to the seller.      duty to the buyer.

If you show a prospective buyer property not listed with you. They are not interested in that property. What are your agency responsibilities to the buyer?

*You are presumed to be a buyers agent (unless you meet one of the exceptions.) As a buyers agent you are to make a good faith and continuous effort to find a property for the buyer until that relationship is terminated.*

Are you required to show a buyer you represent properties that are for sale by owner?

*No, you are not obligated to show a buyer properties to a buyer where there is no written agreement from the seller to pay you commission. This is because all agreements for commission must be in writing according to the Statute of Frauds.*

If you have a listing that you show to prospective buyers, are you breaching your duty to the seller by showing them other similar properties?

*No, according to the duties of a sellers agent, you can show competing properties to a buyer.*

If you have a listing with a seller, can you list another property in the neighborhood at a better price without breaching the duty to your first seller.

*Yes, you can list competing properties without breaching your duty to the seller.*

## **When You are Both Holding Hands .. Dual Agency**

The section on Dual Agency became an issue because of the confusion and practice of the agents when working in a dual agency situation and when is there full disclosure. The prior version of RCW 18.86.020 Law of Agency states that:

“ A licensee who performs real estate brokerage services for a buyer is a buyer’s agent unless the: . . . Licensee has entered into a **written agency agreement** with both parties, in which case the licensee is a dual agent . . .” (it must include terms of compensation.)

Note, under this statute, this is the only way a dual agency could have been created in Washington. Unfortunately, exactly what that required wasn’t 100% clear. Some people claimed that a dual agency could be created by either selecting a box on the NWMLS Purchase and Sale Agreement indicating the listing agent also represented the buyer, or using a Form 42 Agency Disclosure indicating a dual agency situation. So though licensees used the PSA or Form 42, the statute still stated that there had to a written agreement prior to performing brokerage services. It must also disclose terms of compensation.

Under the amended Law of Agency RCW 18.86.020 it states:

“A broker who performs real estate brokerage services for a buyer is a buyer’s agent unless the: . . . (c) Broker’s firm has appointed broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the **broker’s firm has appointed the**

**broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer, in which case the broker is a dual agent . . . .”**

This language requires an agreement between the firm and the parties and that the firm has appointed the broker as agent for both parties.

Dual agency occurs when an agent sells his or her own listing. In addition, when an agent sells an in-house listing, the broker becomes a dual agent. Undisclosed dual agency (often occurring when the agent has acted as an agent for both parties without disclosing) is where problems can happen.

The duties of a dual agent are the same in the Law of Agency as the duties of a single agent representing the buyer or seller.

When a listing agent shows his or her own listing to a purchaser that they represent, are they automatically a dual agent.

*No. Dual agency must be in writing with terms of compensation after providing the pamphlet on the Law of Agency. When representing a purchaser, the real estate agent should discuss agency with the consumer. A listing agent showing and selling to a buyer may represent the seller exclusively or be a dual agent.*

*Dual agency could occur if the licensee discloses to the buyer verbally that they represent the buyer. The seller, most likely in most listing agreements, has agreed in writing to dual agency. If the agent acts as a buyer's agent and is only going to represent the seller, the agent could have created an undisclosed dual agency situation. Undisclosed dual agency can create misrepresentation. If it is not in writing according to the law, the agent should not be acting as a dual agent.*

Contact your Designated Broker or Branch Manager how to best comply with this statute when working as a dual agent.

# Chapter 2

## Organizational Structures and Responsibilities

### A. “Teams”

Under Washington State License and Agency Laws, the word and concept of “team” is not defined. It has been a common practice within many real estate firms to have an additional layer of organization that includes one or more agents working together under the name of a team.

The following can be examples of current team organization

- A husband and wife working together. Once can be licensed as a broker and the other unlicensed. One or both can be managing brokers.
- A team organized under the name of a “top” agent can include an entire management structure. There can be listing agents, buyers agents, and transaction staff. The lead agent can be licensed as a managing broker and be delegated duties to supervise the others within the sub organization. Or the lead agent can hold a broker’s license and have no duties to supervise the other brokers within the team.
- A group of agents can work together as a team with or without using a team name. They can work together with clients. They can all be licensed as brokers or there can be one broker with a managing broker’s license who is responsible for the team records.

When a group of agents chooses to use a name to describe their team when advertising, there must be full disclosure of the real estate firm name.

In some cases, a team may request from the designated broker that the team name be an “assumed name” under the Dept of Licensing. If that is the case, the organizational corporate structure is not changed, but the Dept of Licensing is aware that the team is organized under the firm and the firm name is not required on advertising. This is only in the case of a registered “assumed name.”

### Unlicensed Assistant Guidelines

Before discussing what a real estate assistant can or cannot do under license laws is important to first take a look at the definition of Real Estate Brokerage services according to Real Estate License Law.

According to RCW 18.85.011, the definition of real estate brokerage services means:

Any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation, or by a licensee on the licensee's own behalf:

- (a) Listing, selling, purchasing, exchanging, optioning, leasing, renting of real estate, or any real property interest therein; or any interest in a cooperative;
- (b) Negotiating or offering to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate, or any real property interest therein; or any interest in a cooperative;
- (c) Listing, selling, purchasing, exchanging, optioning, leasing, renting, or negotiating the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, lease, exchange, or rental of the land upon which the manufactured or mobile home is or will be located;
- (d) Advertising or holding oneself out to the public by any solicitation or representation that one is engaged in real estate brokerage services;
- (e) Advising, counseling, or consulting buyers, sellers, landlords, or tenants in connection with a real estate transaction;

- (f) Issuing a broker's price opinion. For the purposes of this chapter, "broker's price opinion" means an oral or written report of property value that is prepared by a licensee under this chapter and is not an appraisal as defined in RCW [18.140.010](#) unless it complies with the requirements established under chapter [18.140](#) RCW;
- (g) Collecting, holding, or disbursing funds in connection with the negotiating, listing, selling, purchasing, exchanging, optioning, leasing, or renting of real estate or any real property interest; and
- (h) Performing property management services, which includes with no limitation: Marketing; leasing; renting; the physical, administrative, or financial maintenance of real property; or the supervision of such actions.

In order to perform real estate brokerage services an individual must be licensed under the real estate license laws. If a real estate assistant performs any of these duties that assistant must have an active real estate license.

To clarify what duties a licensed and unlicensed assistant can perform, the Department of Licensing published guidelines.

**Unlicensed Assistants MAY:**

- Provide information about the characteristics of a listing or the terms of a transaction, as written and approved by a real estate licensee.
- Pick up or deliver documents and keys (basically act as a courier).
- Follow up on loan commitments and pick up or deliver loan documents after a contract has been negotiated.
- Write and place advertising.
- Gather market analysis information.
- Perform normal clerical duties such as typing, scheduling appointments, etc.
- Transport people to properties and surrounding areas of interest. While performing this duty, they may only provide answers that are on preprinted material prepared by a real estate licensee.
- Obtain any public information from government offices, utility companies, title companies, etc.
- Make keys, install boxes, and place signs on the property.
- Greet people at an open house, distribute preprinted media material, and help provide security.
- Submit forms and changes to a multiple listing association.
- Check on the progress of loans, credit reports, etc.
- Receive rent payments and compute commission checks.
- Record and deposit earnest money and security deposits.
- Order or perform repair or maintenance.
- Conduct telemarketing or phone canvassing to schedule appointments to seek clients, **provided:**
  - Compensation isn't conditioned upon receipt of compensation by the licensee or firm.
  - They don't provide any other brokerage services.

**Unlicensed Assistants MAY NOT**

- Show properties, answer questions, or interpret information about the property, price, or condition.
- Interpret information about listings, titles, financing, contracts, closing, or other information relating to a transaction.
- Fill in legal forms or negotiate price or terms.
- Hold or disburse trust funds.
- Perform any act with the intent to circumvent, or which results in the circumvention of, real estate [licensing laws](#)

## **b. The Licensee's Status as Independent Contractor**

Most real estate brokers are considered independent contractors. In many situations, independent contractors are exempt from paying and receiving the benefits of workers comp which is also known as industrial insurance. But, in Washington State, a 1993 court decision requires that real estate agents pay premiums and receive the benefits of workers comp. The real estate firms pay workers comp premiums quarterly. Premiums are paid into a state fund and used to pay for injured workers. The firm can pass the cost of the premiums on to the real estate brokers. Real estate assistants licensed and unlicensed are also required to pay premiums.

There are some situations and firms where a licensee may be considered an employee.

As an independent contractor, subject of Income tax, health insurance, and retirement savings issues vary from those who are employees. A licensee's status as independent contractor may impact all, and licensee should seek the advice of experts in all areas.

## **C. Broker Safety**

There are times when a seller, buyer or the real estate agent may be vulnerable in a real estate sales situation. In this industry real estate agents, both women AND men, need to be aware what decisions may affect their clients, the property or themselves. It is important to know what measures can be taken for self-protection, protecting identity and property, clients, and drug issues.

There are numerous statistics and stories in the country about the danger and risks taken by real estate agents. The National Association of REALTORS undertook a study in released in June 2002 that showed that 1 in every 4 agents in the study have been involved in incidents or harassing situations. Over half, 67% of agents, in the study have experienced safety concerns, incidents or harassing situations. Forty percent of the agents know of other agents that have been in safety incidents or harassing situations. In the United States according to the Bureau of Labor Statistics in 2007, there were 18 fatalities of real estate agents/property managers/community association managers. Of those 10 were homicides. These are old statistics before we had the technology today, but the dangers are still there.

Don't take risks as a real estate agent. There are times when the market is slow with desperate sellers that appear to really "need" you. There are buyers that are looking for an unbeatable deal. You might not have had a client in a long time. Don't do something that is risky just to get a deal. Follow your instinct.

Get ID from clients and have them prequalified prior to showing homes. Hold open houses during daylight hours only and if possible have another person there. Do not meet buyers out at properties without meeting them at the office first. Make sure someone always knows where you are at all time showing. Keep an escape route when in a home alone. Never go into the basement with a client. Always follow a client up the stairs... not have them follow you. There are many other tips... but your instincts should guide you.

Have a plan so that if you contact another agent, that agent or your office knows that requesting the "red file" is a sign that there is a serious issue, for example.

When you show prospective buyers properties, it is important to avoid potential mishaps that can result in injury or danger to them. Buyers shouldn't be climbing on the roof or messing with the electrical panel, for example.

Sellers need to be counseled to put away items of value. There are many items lying around the house that have value but the homeowners may not realize it. Their identity is at risk based on what they may leave on their desk. They have items of value from computers to jewelry to car keys that can be lifted by shady buyers.

If an agent does have a problem, they need to report it to authorities. Many agents get embarrassed or don't think it was really a serious problem, and do not report their concerns to local police. You could be saving another life!

One agent told me in class that a friend of hers was horribly attacked at an open house. She called her sister and went directly to her house. Then she called her husband and told him she was overworked and needed a break and that she was staying with her sister for a while. She never reported the attack to the police or even to her husband!

#### **D. DOL Online Renewal and License Maintenance Features**

Every licensed real estate broker has a dashboard on the Department of Licensing website. This is where you keep your contact information current, renew your license, and transfer your license. It is accessed using your real estate license number.

When you renew your license, you will click "renew" on the dashboard and you will be taken to a screen where you will attest that you have taken your continuing education. You will no longer list the classes, course numbers and dates. Then, you will pay using a credit card.

The Dept of Licensing will automatically audit approximately 10% of the renewals. If that occurs you will be asked to email your certificates.

Every six years, every licensee is to be fingerprinted. You will be notified when you are due for fingerprinting. In the past, fingerprint cards were mailed out. Now, there is a vendor that takes care of all fingerprinting. There are certain offices with times available and you can make an appointment.

If you choose to transfer or leave a firm, that is completed through the website on your own without the permission of the designated broker. If you choose to go to another firm, that firm will "open the door" with a request and you will click to accept.

#### **E. Secret Listings**

Wow, off market listings and sales was a hot issue discussed at the Washington Realtor Legal symposium. Pocket listings are violating our MLS rules. They also are not good for the homeowner as they will most likely not get full value if not exposed to the open market. This could leave the agent with some liability.

Off market listings are considered any listing that is not exposed to the open market, which in our case is the local MLS. Pre-listing, coming soon or whisper listings are where the broker has engaged a seller in a limited marketing arrangement to premarket or sell prior to executing a listing agreement.

During the Legal Symposium in May 2015, Christopher Osborn spoke at length about the problems with off market and pocket listings. One entertaining and serious discussion included the motive for a real estate broker to have a "pocket listing" agreement with a seller instead of an actual signed listing agreement

with the MLS. The excuses listed included: the seller did not want to be identified, the house needed to be staged, the owner not ready to show, the property is high end, the owner wants to limit exposure (could be dangerous under fair housing), the owner wants to “test” the market, etc. All those are basically excuses and as a real estate instructor I also hear them in my classes.

As a real estate agent and member of the MLS and most often the REALTORS, you are bound by the laws, rules and guidelines in order to sell real estate for a commission in our state. The NWMLS rule says that “Members shall not promote or advertise any property in any manner whatsoever, including but not limited to yard or other signs, flyers, websites, email, texts, mailers magazines, newspapers, open houses, previews, showings and tours, unless a listing for that property has been delivered to NWMLS or input by the member and has not been cancelled or expired.”

Most often, the broker is not disclosing to the firm. Most experts believe that having pocket listings that are not exposed to the open market are simply motivated by greed. The median sales price for a listing that sells through the MLS is between 9%-30% higher than if property sold as off market. The value of the MLS is much greater than the consumers realize.

If you do sell a property that was not exposed to the open market through the MLS, it is important to have a seller representation agreement if the broker is representing seller on a sale to a buyer the seller has identified.

# Chapter 3

## Legislative Issues

### National Legislative Issues

#### A. Marriage Equality and Real Estate

In 2015 the Obergerfel v.Hodges Supreme Court case required all states to issue marriage licenses to same sex couples and to recognize same sex marriages validly performed in other jurisdictions. This legalized same-sex marriage throughout the U.S. It is a landmark civil rights case in which the US Supreme Court ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the 14<sup>th</sup> Amendment to the US Constitution. The way that property is titled, and the tax consequences affects ownership and sales. When purchasing a home, married spouses, including same-sex marriages, may have an automatic right of survivorship with limitations including prenuptial agreements. This can affect estate planning as married couples have priority to serve as personal representative, guardian, or conservator of their spouse. The surviving spouse may have the right to inherit and to provide for the spouse through community property rights where applicable. Any of these issues are beyond the scope of the agent. It is advisable to suggest that all clients seek the advice of legal and tax experts when purchasing or selling real property.

#### B. Counseling and Incentives

Home ownership and the purchase of a home is very complicated especially to first time buyers. Many prospective homebuyers do not shop around for home financing even though there may be better options.

A Consumer Finance Protection Bureau (CFPB) 2013 survey found that approximately ½ of borrowers seriously considered only one lender before deciding where to apply. And, it also showed that 77% of borrowers submitted an application to only one lender or broker. Nearly 1/3 of low and moderate-income homebuyers underestimate their household debt by \$5000 or more. When homeowners are in trouble, they can often fall victim to foreclosure rescue schemes without knowing their options.

According to research by HUD, home buyer counseling and education has shown to substantially improve prospective and current homeowners comprehension of their choices, financial decision making and the ability to address issues that arise with their homes or finances. It can help participants lower their housing costs, save more income, improve their credit, avoid delinquency, address defaults, and avoid foreclosure.

Hud created home buyer education that can benefit homebuyers to understand the process and to also add incentives to complete the education. These are available through lenders. <https://www.huduser.gov/portal/periodicals/em/spring16/highlight2.html>

#### C. VA (Veterans Administration) Housing

In 1944 the federal government established the VA home Loan program.

Since November 2014, the VA has allowed veterans to negotiate the payment of wood destroying insect inspection fees in select southern and western states including Washington State.

The housing industry is proposing legislation to introduce VA rehab loans similar to FHA 203K programs on a Federal level.

## Washington State Legislative Issues

### A. Buildable lands and Homeless funding

Senate Bill 5254 passed this year to ensure adequacy of buildable lands and zoning in urban growth areas and to provide funding for low-income housing and homelessness programs. It modified timelines and factors in the review and evaluation program in the Growth Management Act. It created a property tax exemption program for cities and counties to preserve affordable housing for low-income households. In addition, it extended the \$40 surcharge until the year 2029 for local homeless housing and assistance.

### B. Excise Tax Bill Did NOT pass

This bill, HB 2186 and SB 5929 focused on an attempt to improve the fairness of the state's excise tax system.

- Impose a 7% tax on adjusted Washington Capital gains
- Make changes to business and occupation tax
- Reform the real estate excise tax
- Make transfers of new revenue to the Education Legacy Trust Fund.

### C. The Hirst Decision affects all developable land relying on well water.

In the [Whatcom County vs. Hirst, Futurewise, et al. decision](#) (often referred to as "the Hirst decision"), the Washington State Supreme Court ruled that the county failed to comply with the Growth Management Act requirements to protect water resources. The ruling required the county to make an independent decision about legal water availability. While the case directly related to Whatcom County, it set legal precedent that applied to other counties.

A reliable, year-round supply of water is necessary for new homes or developments. Before the Oct. 6, 2016, court decision, many counties relied on our determination about whether year-round water was available. The court decision changed that. Counties had to make their own assessment about whether there was enough water, both physically and legally, to approve any building permit that would rely on a permit-exempt well. In response to the decision, several counties severely restricted approvals of subdivisions and building permits for houses relying on permit-exempt wells. Some counties required permit applicants to pursue expensive hydrogeological study before building.

Although the Legislature debated solutions to address the impacts from the Hirst decision during the 2017 session, they were unable to reach an agreement on legal changes and did not pass any related legislation. Early in the 2018 legislative session, lawmakers found resolution and passed Engrossed Substitute Senate Bill 6091 on Jan. 18, 2018. It was signed by Gov. Inslee the next day.

## What does the law do?

- The law went into effect immediately when signed on Jan 19, 2018
- ☐ The law focuses on 15 watersheds that were impacted by the Hirst decision and also establishes standards for rural residential permit-exempt wells in the rest of the state. The law divides the 15 basins into those that have a previously adopted watershed plan and those that did not.
- The law allows counties to rely on our instream flow rules in preparing comprehensive plans and development regulations and for water availability determinations.
- It allows rural residents to have access to water from permit-exempt wells to build a home.
- It lays out these interim standards that will apply until local committees develop plans to be adopted into rule:
- Allows a maximum of 950 or 3,000 gallons per day for domestic water use, depending on the watershed.
- Establishes a one-time \$500 fee for landowners building a home using a permit-exempt well in the affected areas.
- It retains the current maximum of 5,000 gallons per day limit for permit-exempt domestic water use in watersheds that do not have existing instream flow rules.
- It invests \$300 million over the next 15 years in projects that will help fish and streamflows.

## Are counties that restricted building permits in response to the Hirst decision now issuing building permits?

Counties are evaluating the new law and may need to update their development codes to meet the new requirements. We are aware that these counties intend to respond quickly. After they do, then they can issue building permits and approve subdivisions accordingly.

## What wells are impacted by this law?

The law went into effect on Jan. 19, 2018. The Legislature wrote the bill to provide that wells constructed after this date are subject to the new law, and wells constructed prior to this date constitute evidence of adequate water supply.

## What is the difference between basins with and without a watershed plan?

The law focuses on 15 basins that were impacted by the Hirst decision. It divides the basins into those that have a previously adopted watershed plan and those that did not.

In 1997, the Legislature passed the Watershed Planning Act. Of the 15 basins identified in Engrossed Substitute Senate Bill 6091, seven have adopted watershed plans. Of the seven, five still have active groups involved in watershed-related issues.

### Watersheds that previously adopted plans

Watersheds with previously adopted watershed plans are the Nooksack, Nisqually, Lower Chehalis, Upper Chehalis, Okanogan, Little Spokane, and Colville. For these seven basins, local watershed planning units are to update the watershed plan. We are obligated to assess if the plan results in a net ecological benefit.

- The law identifies the Nooksack and Nisqually basins as the first two to be completed. They have until February 2019 to adopt a plan; if they fail to do so, we must adopt related rules no later than August 2020.
- Planning units in the Lower Chehalis, Upper Chehalis, Okanogan, Little Spokane, and Colville basins have until February 2021 to develop their plans.
- For these seven watersheds, the maximum annual withdrawal is 3,000 gallons per day per connection.

### Watershed without previously adopted plans

Eight other watersheds do not have previously adopted watershed plans. They are Snohomish, Cedar-Sammamish, Duwamish-Green, Puyallup-White, Chambers-Clover, Deschutes, Kennedy-Goldsborough, and Kitsap. For these eight basins:

- We will establish and chair watershed committees and invite representatives from local governments, tribes, and interest groups.
- The plans for these watersheds are due June 30, 2021.
- The maximum annual withdrawal is 950 gallons per day per connection. During drought, we may curtail this to be 350 gallons per day per connection for indoor use only.
- Counties in these areas have to ensure that building permit applicants adequately manage stormwater onsite.

### **What counts as a permit exempt use of groundwater?**

You need a water right permit or certificate before withdrawing groundwater, but there are [four exceptions for small uses](#). Although these permit-exempt uses don't require a water right permit, you are still subject to state water law.

#### **Groundwater permit exemption**

The groundwater permit exemption allows four small uses of groundwater without a water right permit:

- Domestic uses of less than 5,000 gallons per day
- Industrial uses of less than 5,000 gallons per day
- Irrigation of a lawn or non-commercial garden, a half-acre or less in size
- Stock water

### **Fees associated with the legislation.**

There is now an additional cost (\$500) for those who are having new private wells installed. \$350 goes to the State, and \$150 goes to various local agencies.

It is important that brokers *not* give legal advice regarding whether an undeveloped parcel has adequate water supply in light of the Whatcom County vs. Hirst, Futurewise, et al. decision and proceeding legislation. The question of whether a proposed water source meets the legal availability requirement in RCW 19.27.097 is a legal question. It is also expected that brokers ensure that their clients receive expert advice on these issues, i.e., to advise clients, *in writing*, to seek the advice of a water specialist (i.e., lawyer, hydrogeologist, etc.).

Brokers need to use appropriate vacant land forms should be used to explicitly allocate the duty to investigate legal adequacy of water supply for the property. The statewide purchase agreement advises buyers to ensure adequate water supply to the property and Form 22L&A includes contingency language related to confirming water supply.

### **D. Blooming FLOWRs**

There are a variety of types of houseboats, floating homes and barges in Washington State. They used to be listed on the MLS until an attorney at the MLS decided some were actually "vessels" and needed a vessel license. This meant that many floating on water residences could not be listed on the MLS and sold by real estate agents. Other floating homes on the same dock could be listed. But, Linda and Kevin Bagley championed a bill to amend the definitions in real estate license law RCW 18.85 to add Floating on Water Residences to real estate brokerage services. Floating homes will all be back on the MLS! If you are interested in selling a floating home, know that there are many issues that are involved in those

sales... from the ownership/lease of the dock, the HOA's, the floatation, parking, etc. Ask many questions and if it is beyond your expertise, get advice and possibility work with an agent who knows this business.

# Chapter 4

## WA State Consumer Complaints

### A. Present All Written Offers

#### Failure to timely present all written offers (RCW 18.86.030 (1) (C))

“Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:”

“To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing sale or the buyer is already a party to an existing contract.”

The most basic duty of a seller's agent is to help the seller get the best price and terms. It is important to note that if you have a listing that is sold pending; you must still present other offers. The seller cannot sign two agreements, of course, unless one is a back up or subject to the failure of the first offer. If buyer or seller makes an offer to the other, after mutual acceptance, typically an offer to modify the contract, that offer must be presented timely. If a different buyer makes an offer to seller after seller is already in a binding agreement with a buyer, that new offer must also be presented timely to seller.

It is clear that sitting on one written offer while the seller accepts another offer is a very bad practice and clearly violates the law.

If the listing agent receives an offer that he or she believes is not a complete offer it is far lower than what the seller might accept, or was received after the other offers, the listing agent still has the responsibility to present the offer to the seller. When written offers come in that are so low they are offensive or so poorly written they are indecipherable, it is not up to listing broker to determine whether those offers should be presented.

If there are multiple offers and the listing agent sorts out the top one, two or three offers, the seller still has the right to review all the offers presented. Even if broker knows that buyer cannot or will not agree to seller's proposal, broker must present buyer's written offer to seller. When seller has already entered a purchase agreement and a competing offer is presented by a new buyer, the listing broker must present it--even if broker anticipates a bad reaction by seller. When buyer and seller are in contract and seller proposes written modification of the agreement, it is never up to buyer's broker to reject the modification. Even if broker knows that buyer cannot or will not agree to seller's proposal, broker must present seller's written proposal to buyer.

If a summary of each offer is presented to seller, to assist seller in processing the information, the entirety of each offer must also be provided to the seller. It is unlawful for a broker to present something less than the offer as written. Make sure the seller has the ability to review the entire offer.

Often there is a date chosen to present all offers to the seller. An offer may have an expiration date prior to that date. If seller is unavailable or refuses to review an offer prior to expiration, then listing broker's file should reflect those circumstances. Even if seller set an offer review date in the future, broker must

notify seller if an offer comes in from a buyer with an expiration date prior to seller's established review date. Seller must be informed that an offer will expire, and thus be void, before the pre-determined offer review date. It is always up to seller whether seller will review an offer earlier than the review date listed.

Any written offer, notice or communication, to or from a party, no matter how ridiculous, inconsequential, offensive or irritating, must be presented timely. The duty to timely present all written offers persists even after mutual acceptance.

### **Definition of "a timely manner?"**

Brokers have an Agency Law duty to present all written offers in a timely manner.

All offers or communication must be presented in a "timely fashion." Factors within broker's control that delay presentation are unacceptable. If the only relevant factors resulting in delayed presentation are factors under broker's control, broker will have no excuse for failing to make timely presentation.

The determination of timeliness, however, is not always so clear. "Timely" will be impacted by many forces, often outside the control of a broker. Seller may leave on vacation with instructions to hold all offers until seller's return. Buyer may be hospitalized unexpectedly and unable to receive written communications until released. There can be any number of factors that affect "timely" in a given transaction. However, if presentation of a written offer, notice or communication is delayed by forces beyond broker's control, broker should include evidence or a notation of those factors within the transaction file. In defense of a complaint, broker may need to be able to prove that presentation was "timely" given the circumstances, according to the Washington Realtors.

Moreover, all offers must be presented timely. What "timely" means depends upon the circumstances at issue. Certainly, "timely" requires presentation before the offer expires, unless it is impossible to present the offer prior to expiration.

Similarly, absent a seller's instruction, it is not appropriate to delay presentation of an offer while listing broker hopes for additional offers to be presented, including offers from listing broker's buyer. If listing broker believes that delayed presentation of an offer is beneficial to seller, listing broker must advise seller of the circumstances and adhere to seller's subsequent instruction. If seller instructs delay, broker should document that instruction, in writing, in broker's transaction file.

### **Offer Accepted**

When a seller accepts an offer, it is important for the listing agent to take the responsibility to inform the other buyers that their offer was not accepted. It is important to note that this "failure to present offers" has become a significant discipline issue for DOL. It is unlikely that listing brokers are actually failing to present all offers timely. It is far more likely that listing brokers are failing to give unsuccessful buyer brokers proof that seller actually reviewed and rejected buyer's offer, leaving buyer and buyer's broker to wonder whether seller saw buyer's offer at all. Buyers and buyer brokers, frustrated by not getting the property and uncertain as to whether buyer's offer was seen, are more likely to file a complaint with DOL, claiming listing broker failed to present the offer. When DOL investigates, listing broker will have to prove that listing broker timely presented all written offers. Unfortunately, a typical listing file contains no proof of timely presentation.

Listing brokers can avoid this DOL investigation and discipline altogether by giving buyer brokers the courtesy of notification that seller rejected buyer's offer. Returning the offer with the word "rejected" written across the face of the offer, signed and dated by seller, provides proof of seller's timely review and rejection of the offer.

## **B. Maintain a complete transaction log**

### **Failure to Maintain a complete transaction Log/file (RCW 18.85.285 (1); WAC 308-124C-105**

Every firm must maintain a transaction log identifying ALL real estate brokerage activity. This includes, at a minimum, all listings, sales, and broker price opinion's. The log must identify the real estate service provided, the name of the licensee providing the service, identification of the parties or property and the name of the reviewing managing broker in the event of a broker within the first two years of licensing. It is not necessary to log individual documents within a transaction. Rather, the transaction itself must be logged. Using the log as an index, designated broker or a DOL auditor should be able to locate a transaction file and then review the transaction file for all details related to documentation. All of these potential disciplinary issues are avoidable with development of good practices. If brokers need assistance in developing a better approach to any of these potential problems, brokers should work with their managing broker.

Amid the rush of a busy market, it seems that brokers (and firms) are forgetting to retain "all material correspondence." Often, DOL discovers that there is NO correspondence retained in a firm's transaction files. Correspondence can be critical in proving what happened during a transaction, who said what, what agreements were made, what opportunities were purposefully waived, whether a referral to seek an expert was given by broker, etc. Correspondence can occur, at a minimum, in the form of text, email, letters, hand written notes and social media. Brokers must retain ALL material correspondence, regardless of the medium on which the correspondence was made. Chances are good that brokers are communicating with clients and taking actions based on a client's instruction. However, in the face of a dispute, if broker cannot provide a written record of what was said by the client, the controversy is likely to devolve to a "he said, she said" debate and the consumer often emerges the victor in that battle, according to the Washington Realtors.

## **C. Have written delegation of duties**

### **Lack of written authority of Delegation when required RCW 18.85.275(3)**

The Designated broker of a firm can delegate certain responsibilities to managing brokers. Duties of a designated broker cannot be delegated to brokers, but only to those with a managing brokers license.

Real estate license law requires that all delegations of authority be in writing from designated broker to a managing broker. While designated brokers are able to delegate many duties to a managing broker, the delegation of authority is not complete unless and until it is put into writing, signed by both the designated broker and the managing broker. Oral delegations of authority do not successfully delegate authority and do not hold up under an audit.

The delegation of authority is NOT a delegation of responsibility. When a designated broker delegates authority to a managing broker, the managing broker is "authorized" to take action that is otherwise required, pursuant to the Licensing Law, of the designated broker. However, if managing broker fails to act or fails to act responsibly to fulfill the delegated act, then designated broker remains responsible, based on the Licensing Law, to perform the required act. For example, if a designated broker properly delegates authority to a managing broker to supervise the brokerage services of a team member who is licensed less than two years, and team leader fails to exercise proper supervision, designated broker remains responsible to the Department of Licensing for that failure of oversight.

The following duties are examples that would require a written delegation of authority from the designated broker to a managing broker.

- Safe handling of client funds which includes the receipt of earnest money

- Maintenance of trust accounts for real estate sales and property management

- Transaction and trust account recordkeeping can be delegated to a managing broker for a team

- Supervision of brokers within the firm. An example can be a managing broker supervising a broker licensed less than 2 years.

# Chapter 5

## Fair Housing and Anti Discrimination

There are times when “disclosure” is against the law. The Fair housing and anti discrimination laws do not protect “minorities.” They protect people that are discriminated because of certain reasons or “protected classes.” There are Federal, State and Local Fair Housing and Anti Discrimination Laws.

### Federal Laws

Legislation on the Federal level to fight discrimination began with the Civil Rights Act of 1866, the Federal Fair Housing Act of 1968, the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

The U.S. Supreme Court rendered its decision in *Jones v. Alfred H. Mayer Co.*, and held that the Civil Rights Act of 1866 banned private, as well as government, racial discrimination in housing. Thus the 1866 Act was given new life, and could be used to fight racial discrimination. It applies to all property whether residential or commercial and only applies to discrimination based on race. It is a federal law and the injured party can bring a lawsuit in federal district court. There is no time limit for filing an action, but the lawsuit must be filed within the time limit for state law for similar claims.

The Federal Fair Housing act was passed in 1968. It created “protected classes.” “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”

The law prohibits discrimination based on protected classes for the sale or lease of residential property. It prohibits discrimination in advertising, lending, real estate brokerage, and certain other services in connection with residential transactions.

The protected classes are:

- Race
- Color
- Religion
- Sex
- National Origin
- Familial Status
- Handicap/ disability

There are exemptions to the federal law but they apply very rarely. There is no exemption for any transaction involving a real estate licensee. The Washington law on discrimination is stricter and has no exemptions.

Later, Congress enacted the Age Discrimination Act of 1975, which prohibited discrimination on the basis of age in programs receiving federal financial assistance. In 1980, President Carter expanded Kennedy's executive order to include gender-based discrimination, and to grant HUD additional authority to issue regulations to further fair housing in federal programs.

The 1988 Amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the act. The 1988 Amendment made major changes to Title VIII, including adding two protected classes to the Fair Housing Act: (1) families with children and (2) handicapped persons. The Amendment also modified the administrative process for HUD complaints, and essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act. The Amendment removed the cap on punitive damages and increased the available damages and civil penalties. The Amendment also extends Title VIII to other discriminatory practices, relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

The Housing for Older Persons Act of 1995 (HOPA) makes several changes to the 55 and older exemption. Since the 1988 Amendments, the Fair Housing Act has exempted from its familial status provisions properties that satisfy the Act's 55 and older housing condition.

First, it eliminates the requirement that 55 and older housing have significant facilities and services designed for the elderly. Second, HOPA establishes "a good faith" reliance immunity from damages for persons who in good faith believe that the 55 and older exemption applies to a particular property, if they do not actually know that the property is not eligible for the exemption and if the property has formally stated in writing that it qualifies for the exemption.

HOPA retains the requirement that senior housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. It also still requires that senior housing publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older.

An exempt property will not violate the Fair Housing Act if it includes families with children, but it does not have to do so. Of course, the property must meet the Act's requirements that at least 80 percent of its occupied units have at least one occupant who is 55 or older, and that it publish and follow policies and procedures that demonstrate "an intent" to be 55 and older housing.

A Department of Housing and Urban Development rule published in the April 2, 1999, Federal Register implements the Housing for Older Persons Act of 1995, and explains in detail those provisions of the Fair Housing Act that pertain to senior housing.

## Washington State Law on Discrimination

In Washington State there is the Law against Discrimination. The law prohibits unfair discriminatory practices in real estate transactions including the sale lease, appraisal, brokering, exchange, lending and offering real estate brokerage services. The law covers all real estate transactions, not just residential housing as the Federal Law does.

The Washington Law on Discrimination prohibits a wide range of discriminatory practices in employment, insurance, and credit transactions, place of public accommodation and amusement (such as restaurants, movie theaters, hotels, beauty shops, and most other commercial businesses.”

The protected classes in Washington State include:

- Race
- Creed,
- Color,
- National origin,
- Sex
- Sexual orientation,
- Marital status,
- Familial Status,
- Sensory, physical or mental disability,
- Use of a trained guide or service dog,
- Honorably discharged veteran or military status.

Under the law, Aids and HIV are protected from discrimination in the same manner as those with any other mental or physical disability. In Washington State, though not in the discrimination law specifically, it is now legal for same sex marriages.

There are Fair Housing Initiative Program (FHIP) organizations. FHIP organizations are not tied to a specific jurisdiction, but are knowledgeable on all protected classes throughout the state and can either direct the individual to the correct authority or advocate for them through the sometimes difficult process. There are two FHIP organizations in the state – the Northwest Fair Housing Alliance in Spokane that serves eastern and central Washington, and the Fair Housing Center of Washington in Tacoma that serves western and central Washington.

## Unfair Real Estate Practices under Washington Law on Discrimination

Discrimination in real estate transactions, facilities, or services is prohibited whether acting for himself, herself, or another. It is unfair to:

- Refuse to engage in a real estate transaction with a person.
- Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.
- Refuse to receive or to fail to transmit a bona fide offer.
- Refuse to negotiate for a real estate transaction for a person.
- Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property.
- Discriminate in the sale or rental or make unavailable a dwelling to a person or a person associated with the person buying or renting because of a disability.
- Make, print, circulate, post or mail a statement, ad, or sign which indicates directly or indirectly to discriminate. To use a form of application or to make a record or inquiry in an attempt to discriminate in a real estate transaction.
- Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction.
- Expel a person from occupancy of real property.
- Discriminate in the course of negotiating, executing or financing a real estate transaction or services including title insurance.
- Discriminate in any credit transaction
- Induce or attempt to induce anyone for profit, anyone to sell or rent by making representations regarding entry into the neighborhood of a person of a particular protected class. This is called “blockbusting.”
- Insert into a written instrument relating to real property, or honor or attempt any condition or restriction or prohibition based on a protected class.

These kinds of questions have sometimes been asked by the sellers and landlords. Regardless of who the agent represents, it is illegal to answer these questions or respond to these statements.

- Do the buyers have children?
- What is the race of your clients?
- Will the family go to the church next door?
- Is the buyer gay?
- Is your son have a mental disability?
- This is a family neighborhood. I don't think they would fit in.
- Is the buyer single?
- Are the buyers married? (marital status is protected. Escrow needs to know how they take title.)
- Are the buyers seniors?
- A married couple is more stable than a single woman. (major lawsuit on this statement)
- This is not a good neighborhood for children
- This would not be a good neighborhood for disabled children.

If the buyer chooses to live within a mile of a certain church or cultural center, that is the buyers choice. You can accommodate their choice but you cannot steer them to a certain neighborhood. You cannot tell them where others from their same religion or country live. They can choose the neighborhood based on their own research.

Often, people in condominiums and apartments want to discourage or eliminate children from the complex. A condominium board in Seattle was working on changing the rules to eliminate children because they didn't like that grandchildren were living in a unit. That cannot happen. In another case an offer wasn't accepted on a property because the daughter was disabled.

Some people believe that a seller has the right to sell to any buyer they choose. But, in fact, when we "own" property we have a "bundle of rights." Just as we cannot put an industrial plant in a residential neighborhood or construct an addition that is 30 feet high in a subdivision, our rights are limited by federal, state and local laws, codes and restrictions. Sellers are required to obey the fair housing and anti discrimination laws when they sell their property.

The Washington State Human Rights Commission was created to administer the law. It is to formulate policies and make recommendations to government agencies. It is composed of 5 members appointed by the Governor with the advice and consent of the Senate.

Not all cases go to the courts. People face discrimination every day. But, in the real estate industry, we have an obligation to uphold the laws to protect the rights for housing for all people.

## Local Discrimination laws

Cities and counties across the country are developing their own guidelines and laws. It is important to remember that the most laws in the county or city must be adhered to because often they include more stringent rules and a larger list of protected classes. Note the following list from the Puget Sound Area.

## Seattle Anti Discrimination Laws

### Illegal discrimination is when:

- You are treated differently from others in a similar situation; **and**
- You are harmed by the treatment; **and**
- You are treated this way because of your membership in a protected class (i.e., race, gender, etc.) **OR**
- Your request for a reasonable accommodation due to a disability is refused without a valid business reason.

### Seattle currently includes these protected classes:

Age **	Parental status *
Ancestry	Political ideology
Color	Race
Creed	Religion
Disability	Sex
Gender identity	Sexual orientation
Marital status	Use of a Section 8 certificate *
National Origin	Use of a service animal
	Veteran or Military status

\*Not applicable to Employment or Fair Contracting cases

\*\*Not applicable to Public Accommodations cases

### Retaliation

It is against the law for someone to penalize or discriminate against you because:

- You file a discrimination complaint
- You cooperate with a discrimination complaint
- You cooperate with the enforcement of a discrimination complaint
- You comply with anti-discrimination laws

You can file a separate charge of discrimination if someone has retaliated against you. SOCR will conduct a separate investigation concerning retaliation.

### Harassment

Seattle's anti-discrimination laws also protect you from harassment. Harassment is conduct that is directed at you because of your race, religion, gender, sexual orientation, disability, national origin, etc.

Harassment can include: Threats, Slurs or epithets, Threatening acts, Posting offensive materials on walls, bulletin boards, e-mail, etc.

To be considered harassment, conduct must:

Be serious and frequent enough to create a hostile environment and Interfere with your ability to work, live, or enjoy a public place.  
If you have questions, comments or requests about our services please contact our office at (206) 684-4500 voice, (206) 684-4503 TTY.

## Tacoma Fair Housing

The Tacoma Neighborhood & Community Services Department, Human Rights Division investigates and resolves complaints alleging discrimination in housing which violates the Law Against Discrimination, [Chapter 1.29](#) of the Official code of the City of Tacoma, as amended, and the Federal Fair housing Act.

The Fair Housing Code, Chapter 1.29, as amended, prohibits unfair housing practices in the rental, sale, or financing of housing based on:

Race	Familial Status
Color	Disability
Sex	Ancestry
Religion	Sexual Orientation
Age	Gender Identity
National Origin	Veteran/Military Status
Marital Status	Familial Status

If your experience occurred within a year from the most recent date of alleged discrimination stop by or contact the Neighborhood & Community Services Department, 747 Market Street, Room 836, Tacoma, WA 98402 Phone: (253) 591-5151

# Chapter 6

## Real Estate Practices

### A. Love Letters from Buyer to Seller

Whether a poem, photo collage or a love letter, buyers are trying to “promote” their offers to the sellers. Especially as the real estate market heats up and buyers may be competing with other offers that may even be higher, writing a personal letter to appeal to the sellers emotionally to accept the buyers offer is becoming more common. The love letter is an attempt to entice the seller into accepting an offer based on factors that have nothing to do with the purchase and sale agreement. There are articles all over the internet, samples of letters, and even templates.

Though it may appear innocent enough, the love letters can encourage a seller to discriminate when choosing a buyer for their home. The seller and the real estate agents must not violate Federal, State and local anti discrimination laws. Home owners selling their home cannot choose one buyer over another based on a protected class. Protected classes are NOT “minorities.” EVERY person falls under protected classes.

The love letters that are on websites from national news to Realtors most often describe the buyers as a “married couple with children.” Familial status is a protected class in the Federal Fair Housing Act. Familial Status and Marital Status are protected in almost every State and Local anti discrimination law. If a single woman, a gay couple with no kids, a man who will not have children, or a senior are bypassed because the seller goes with emotion and chooses the little family, the other buyers have just as much right to purchase the property. Take it one step further. Many times the letters include photos of the little family and their pooch. The sellers could be encouraged to discriminate based on race, color, national origin or religion based on the photo.

Love letters that are highlighted in articles throughout the internet most often come from a husband and wife with children. Many are accompanied by photos.

Examples of love letters straight from the Seattle PI (edited) in may 2013 include:

Dear \_\_\_\_ Family,

My name is Christine and my husband’s name is Nik. I was born and raised in \_\_\_\_\_ city and Nick was born in \_\_\_\_\_. We met and fell in love in 2010 and were married shortly after. We have a wonderful, smiling 4 month old, Lily. We spent our dating time in Capitol Hill and enjoyed it very much. Green Lake, Ravenna and Maple Leaf are where we hope to raise our children and put down long term roots. When we started our house search, proximity to this neighborhood was our priority.

Your home is the first we have seen that genuinely meets all of our wants and needs. We can picture ourselves drinking coffee while watching our children play in the backyard.

We would be deeply grateful to you if our offer is chosen.

Sincerely, a married couple

Dear Mr and Mrs Sellers,

We are young parents with a one year old daughter and we are expecting another baby next year. Recently we were scouting to purchase a small home that appeals to our sense of design. Fortunately we came across the open house and toured your home. The new addition and deck will be perfect for entertaining and for our family. For our children, the great school system offered by Redmond and Woodinville will be important for their futures. We are hoping to imbibe our children with the same sense of home and living that your daughter must have experienced growing up in this lovely home. We hope our offer conveys the deep appreciation we have for it and the care you put into it over the years. Thank you for the amazing opportunity to make an offer to purchase. Sincerely, The buyers

Dear Sellers,

My wife, Jennifer and I wanted to take this opportunity to express to you our appreciation for the home you've made. We can see our little daughter and our soon to arrive little one growing up in through high school and beyond. Your home shows the exceptional level of care and taste. We are offering the most competitive offer we can at this stage in our lives and very much hope that we are able to come to an agreement that is mutually acceptable. No matter what the outcome of this, we just wanted to let you know the personal side of this for us and that we appreciate the pride and care you've put into your home.

We are enclosing a photo of our family. Sincerely, the buyers

Are the letters discriminatory? Consider how often a real estate agent would encourage buyers that originate from another country, are disabled, have misunderstood religious beliefs, is LGBT? Consider...

- If you were a single man who wanted to buy a house within good commuting distance to work and on more than one house you were turned down because the sellers sold to a little "family" for less than your offer. or
- If you were two women who just took advantage of the new same sex marriage equality law in Washington State and you lost on these three houses because the sellers sold to a "family." or
- If you come from a proud immigrant family and you have an accent and a name that is often mispronounced and your offer was not accepted more than once from sellers.

Sometimes... ok... maybe often... the "perfect family" is not perfect. The husband could be abusive, the son could be a sex offender, the daughter might like to deal drugs. Choosing an offer based on a "sweet" letter and a nice photo could be just what the "family" was hoping for. Everyone, regardless of their background, beliefs, health/disability, etc has the right to purchase a home in the area chosen. The seller violates anti discrimination laws when a seller chooses one buyer over another using any information that could be construed as discrimination. The buyers that lost the property have the right to file a case of discrimination. Real estate agents are bound by federal state and local discrimination laws.

As a selling agent, when you pass on the letter to the sellers and the seller's agent, you cannot claim you had no knowledge of the contents of the letter. As a listing agent, if you pass the letter on to the sellers, then you are giving them a reason to discriminate. The sellers may not understand the laws. Real estate agents have a duty to understand the laws and cannot claim "ignorance" when it come to fair housing. It is important for real estate agents to know the laws and instruct the sellers to "Choose the Paper .. not the People" when choosing a buyer for the property.

## **Single Woman Sues Real Estate Agent for Discrimination**

In May of 2004 a young woman said she encountered discrimination when she tried to buy a house in Tacoma ... not because of her skin color, age, religion or ethnicity. She was discriminated because she is single.

She made an offer on a lovely two story house in Tacoma. "It was my dream house. A house that I wanted to purchase to raise a family," she said. The asking price was \$196,000. She offered \$199,000 and was pre approved for the mortgage.

The Listing Agent, when responding to her offer said, "Your guys deal was a better one but they decided to go with the other deal just because it was a married couple and they felt they would be a little more stable.... They were a bit nervous about it being a single woman trying to buy the house and they were just concerned it would come down to financing and something could possible go wrong."

It was discriminatory. The Federal Fair Housing act clearly states that it is unlawful to discriminate based on sex and familial status. The case was settled with the real estate company prior any court hearing. The sellers of a house are liable under Federal, State and Local Fair Housing and anti discrimination laws. The buyers have the right to purchase property regardless who they are or what their background.

## **Condo Board denies Family from living in Subdivision**

**by Karen Peirola, King County Office of Civil Rights 2002**

The King County Office of Civil Rights resolved a fair housing case involving familial status discrimination where Respondents paid the Charging Parties \$18,500 and received fair housing training.

Charging Party and her two children, ages 11 and 14, had dreamed of buying a condominium in their favorite subdivision on the Eastside. When a unit became available in the subdivision, they eagerly contacted their realtor to arrange a walk-through. When they arrived at the condominium, the unit owner told them that children weren't allowed in the subdivision. The Charging Parties were very upset by this news but they attended an open house at the condo the next day to speak to the owner's real estate agent. They were terribly disappointed when the real estate agent confirmed that children were not allowed to live in the subdivision.

Under the local, state and federal fair housing laws, it is illegal discrimination to deny housing to families with children under the age of 18. There is an exception under the federal Housing for Older Persons Act (HOPA) that allows housing for persons age 55 and older, or 62 and older if certain conditions are met; housing complexes that qualify for this exception should be obvious from their signage and publications. However, this condominium subdivision did not qualify for that HOPA exception. KCOCR took the complaint and confirmed the owner's statement.

The owner noted that she had been on the condo board a few years earlier and that it was her understanding that there was a no children policy. The owner's real estate agent denied telling the Charging Parties that children could not live in the subdivision; however, OCR investigators located another woman with children who was also told by the agent at the open house that children were not allowed to live there. OCR resolved the case with the real estate agent and the real estate company for \$16,500 before the investigation was completed. The owner paid Charging Parties an additional \$2,500 after a finding of Reasonable Cause was issued by OCR. All Respondents took fair housing training.

## B. Multiple Offers

In an active market a seller can often have more than one offer. There are no laws or rules from the Department of Licensing that specifically deal with multiple offers.

According to the preliminary data from Redfin December 2013, approximately 40% of all offers in Seattle had competition. According to the Puget Sound Business Journal in October 2013 using Redfin data, about 57% of Seattle homes had multiple offers. Redfin data showed that in Seattle about 13% of the winning offers were all cash and 11% waived the financing condition. The Housing Market Snapshot from the Runstad Center shows that 28,980 resale homes sold in the third quarter of 2013 which is approx 25% higher than a year ago. The statistics are drastically higher in this two year period.

Many MLS' and real estate firms have created forms to deal with multiple offers.

It is most important to bear in mind the laws that pertain to all real estate transactions must be kept in mind. Under the Law of Agency RCW 18.86.030, "it is the duty of a broker to present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase."

If the offer has an expiration date prior to the date the listing agent and seller have listed as a date for presentation, the listing agent must contact the seller to discuss this. The seller may accept this offer prior to the date for presentation though the sell may have better offers waiting.

The REALTOR Standards of Practice clearly requires disclosure of the existence of multiple offers, with the sellers' permission, if a buyer or cooperating broker asks about the existence of multiple offers.

If another offer is presented, it is imperative that IF the seller signs the second offer, it should be "subject to the failure of the first offer." Too often sellers sign a second offer without withdrawing the counter on the first offer. Therefore, sellers have sold their property to more than one party.

If there are multiple offers on a property, the seller has several options.

- The seller can choose just one offer at that time, even if it is not the highest price. But, the seller CANNOT choose an offer over another because of the description of the buyers. For example, the seller cannot choose the offer the single man over the mixed race couple if that is the only reason.
- The seller can reject all offers.
- The seller can counter offer on more than one offer. But the risk is at the property may end be being sold to more than one buyer. Many attorneys and brokers advise against this or creating a "race to the finish."
- The seller can negotiate based on the "escalation clause' that a buyer may have included in their contract.

Often licensees encourage the buyer to write a letter to convince the seller to choose their offer. But, many of the letters include information about the buyer so that the seller could end up choosing one buyer over another violating Federal, State and local fair anti- discrimination laws. A seller can choose who to sell their house to as long as they do NOT discriminate. If one of the other buyers has any reason to believe there is has been a limitation, preference, discrimination or disparate treatment because of a protected class, then that buyer has the right to file a claim. So, as a licensee, it is important to encourage the sellers to choose the "paper" not the "people" when choosing between multiple offers.

There are many situations where the buyers can sign “escalation clauses.” These agreements basically say that they will match or go a certain dollar figure higher than the highest offer. This would encourage the seller to choose that offer due to the fact it would be the highest.

It gets more complicated when there are many offers with similar clauses. Sometimes the clauses have limits as to the highest amount the buyer will pay. Sometimes they require a copy of the second highest offer. Sometimes the seller counters at the higher sale price even without another offer.

For buyers making an offer that might face competition it is important to come in with a strong contract. Buyers should consider that the following will help their position when a seller is debating on which offer to accept.

Buyers should consider that to get their offer accepted the following might help.

- The ability to move and respond quickly to any inquiry.
- Make your highest offer. Learn as much about the market.
- A pre-approved loan with a known local reliable lender.
- A decent down payment when qualifying for the loan.
- A pre-inspection report or have an inspector that will complete the inspection in a short time.
- Make the offer clean with few contingencies.
- A serious earnest money amount.
- Trust your real estate agent.

Make sure you are using the latest forms from the MLS and you are well versed on any policies your office might have

### **C. Builder Contracts**

The likelihood builder contracts are often for the benefit of the builder. The possibility that many builder contracts do not offer buyer protection they do not use the approved Washington State based purchase and sale agreement forms. It is suggested that an attorney review of a builder contract. The effect of non-refundable deposits as they relate to builder contracts should be addressed.

### **D. Professional Cooperation**

Every two years when the core curriculum is updated, this paragraph is included. The agent on the other side of your transaction may appear to be less competent. Remember, that agent may be of the same opinion as you.

When working with another agent on the opposite side of the transaction or when the agent has referred you, it is important to give them a shout out.

To keep a transaction moving smoothly toward closing, it is important to keep open lines of communication and respond in a timely manner. All commission issues need to be in writing.

One of the biggest complaints in the real estate industry is that that the conduct and professionalism of the broker on the other side of the transaction.

One of the biggest complaints from consumers and real estate brokers deals with communication. The broker so often didn't answer the phone and there wasn't a return call is an example. From my own experience, if I call ten real estate agents today, I will probably get about 20% to actually answer the phone even if they just called or emailed me. Only about 20% will call back after leaving a voice mail.

When involved in a transaction, real estate brokers need to have good communication skills. There is no real estate class, designated broker lecture, or motivational seminar that can transform an agent into one that has good communication skills. Success in this business does depend on effective communication. For this month, take the challenge to answer the phone and follow up with people in a timely way!

The type of complaints can include:

- The broker did not answer phone calls or does it sporadically
- The assistant to the broker does not know anything about the transaction
- The Broker did not file the paperwork on time.
- The broker will not confirm the earnest money received.

# Chapter 7

## Property Disclosure

Most lawsuits against brokers are in the area of misrepresentation. The majority are based on water problems including storm water runoff, leaking basements, failed roofs, broken or leaky pipes, Siding problems, adequate water supply and mold.

The Property Information Disclosure is a state law RCW 64.04. The sellers fill out the form. The buyer has to waive right to receive one. There are some sellers that are exempt. The Disclosure Law Form deals strictly with the structure of the property itself. Agents are NOT to fill out the form.

The form is a vehicle for the seller to disclose any information about the structure and title of the property. If there are facts that are not asked on the form, the seller can attach additional pages. The liability for inaccurate disclosure by the seller has been fought in the courts. The buyer should definitely not rely on the form when making decisions to purchase. It is important for a buyer to get a thorough home inspection and anything that arises as a concern should be investigated further.

What has to be disclosed by the seller is not completely defined. The only statutory definition of material fact is in the Law of Agency RCW 18.86. It states that information that “substantially, adversely affects the value of a property” or information that “impairs or defeats the transaction” is a Material Fact. In more simple terms, a seller and agent need to disclose anything that would affect the buyer’s decision to buy or how much would be paid.

The Law of Agency also says that certain information is NOT considered a material fact.

“The fact or the suspicion that the property or any neighboring property is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, political or religious activity, or other act, occurrence or use not adversely affecting the physical condition of, or the title to the property is not a material fact.”

If you happen upon a prospective listing whereby there was a “negative stigma” that could affect a buyer’s decision to buy, it is important to contact the broker and corporate attorney about disclosure to the buyer!

A seller must fill out the environmental portion of the Seller Disclosure form if there is a “yes” answer to an environmental question.

### Lead Paint Disclosure

When a property being sold/leased was built before 1978, the owner/landlord must fill out a “Lead Based Paint Disclosure” form. This is a Federal law that requires a seller or landlord to provide the buyers or tenants about lead based paint. The owner of the property must disclose the location

of any known lead based paint on the property and if the property has been inspected. If it has, the owner must provide the buyer/tenant with a copy of the inspectors report. The seller must also give a buyer 10 days to inspect for lead based paint.

The seller/landlord must also provide the buyer with a booklet called “Protect your Family from Lead In your Home.”

## **Mold Disclosure**

In 2005 Washington State passed a law that requires landlords to provide documentation warning tenants of “the health hazards associated with exposure to indoor mold.” This information must either be given to the tenants individually or posted in a public area. It is important that this information is disclosed to you prior to you signing your lease, as it is the obligation of the landlord to do so. Furthermore, it is required that the landlord maintain a residence that is “fit for human habitation,” and in accordance with existing health codes or ordinances established for the State of Washington. It is also the responsibility of the landlord to maintain the structural integrity of the building and that the “dwelling unit [is] in reasonably weather-tight condition.” However, there are no specific requirements of the landlord to test or remove toxic mold. It is advised that when you suspect mold is present to contact a lawyer prior to moving forward. The Department of Health has more information.

## **I feel the earth move under my feet**

About 13% of Washington has hazardous slide areas. There is a lawsuit in Washington where one issue is that they are claiming the agent didn’t suggest they get expert advice on matters above the agents expertise focusing on the issue of a house built on a hill that may be unstable. Don’t hesitate to recommend an inspection for anything a buyer might be concerned about including hillsides and wetlands.

Washington State conducts a Geologic Survey to maintain an assessment of the volcanic, seismic, landslide, and tsunami hazards in Washington. That assessment must include identification and mapping of hazards, as well as an estimation of the potential consequences and the likelihood of a geological hazard event. While performing its existing obligation of mapping volcanic, seismic, landslide, and tsunami hazards, the state Geological Survey is required to apply the best practicable technology, including light detection and ranging (Lidar) mapping. Further, the Survey is required to acquire new data, coordinate with state and local government agencies to compile and share data, and create and maintain a publicly available database of Lidar and geological hazard maps and geotechnical reports prepared while acquiring the new data.

Information on the geology including landslide hazard, tsunami evacuation and earthquakes is available at the Dept of Natural Resources website.

## When the Rains come

With the rain often comes flooding. Since standard homeowners insurance doesn't cover flooding, it's important to have protection from the floods associated with hurricanes, tropical storms, heavy rains and other conditions that impact the U.S.

In 1968, Congress created the National Flood Insurance Program (NFIP) to help provide a means for property owners to financially protect themselves. The NFIP offers flood insurance to homeowners, renters, and business owners if their community participates in the NFIP. Participating communities agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding.

It is important to refer prospective buyers to flood insurance agents to make sure they get information on flood insurance coverage.

Flood Hazard Maps have been created to show different degrees of risk for your community, which help determine the cost of flood insurance. The lower the degree of risk, the lower the flood insurance premium.

To identify a community's flood risk, FEMA conducts a Flood Insurance Study. The study includes statistical data for river flow, storm tides, hydrologic/hydraulic analyses, and rainfall and topographic surveys. FEMA uses this data to create the flood hazard maps that outline your community's different flood risk areas.

Floodplains and areas subject to coastal storm surge are shown as high-risk areas or Special Flood Hazard Areas (SFHAs). Some parts of floodplains may experience frequent flooding while others are only affected by severe storms. However, areas directly outside of these high-risk areas may also find themselves at considerable risk.

Changing weather patterns, erosion, and development can affect floodplain boundaries. FEMA is currently updating and modernizing the nations [Flood Insurance Rate Maps \(FIRMS\)](#). These digital flood hazard maps provide an official depiction of flood hazards for each community and for properties located within it. FEMA has published almost 100,000 individual Flood Insurance Rate Maps (FIRMs).

There have been changes to the National Flood Insurance Program (NFIP). Flood insurance rates may be going up significantly for some properties located in hazard areas. The Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) repeals and modifies the Biggert- Waters Flood Insurance Reform Act of 2012 (Biggert-Waters). The new law slows some flood insurance rate increases and offers relief to some policyholders who experienced steep flood insurance premium increases in 2013 and early 2014. Flood insurance rates and other charges will be revised for new or existing policies beginning on April 1, 2015. In addition to insurance rates, other changes resulting from Biggert-Waters and HFIAA will be implemented that will affect the total amount a policyholder pays for a flood insurance policy.

One of the big issues is that the flood maps could/ will change and so a homeowner who buys a home may later find out that they live in a flood zone and the insurance could make their monthly payment too high for them to afford. Real estate agents are supposed to disclose to homeowners that they can get flood insurance. This isn't regulated by DOL in our state.

## Buyer Beware

### **Douglas v. Visser.**

On February 25, 2013, the Court of Appeals decided Douglas v. Visser. In that case, the Terry Visser, a *real estate broker*, and his wife purchased a fixer house in Blaine with the intent to fix and rent it. Much of the structure of the house was rotten to the point that the workers could not get nails to hold. The seller told them to make it look good and cover it up so that it could be sold.

The seller checked “no” and “don’t know” on many items on the Property Information Disclosure report. The Buyer asked for more information and a copy of the sellers pre-purchase inspection. The Seller hand wrote some answers and didn’t provide the previous inspection. The Buyers hired a home inspector who noted three small areas of rot. But the inspection report said that they were not structural and that the buyer should deal with them if the rot spread. After closing, the buyers discovered that the house was uninhabitable and essentially had to be rebuilt from scratch. They sued the seller. The buyer prevailed at trial. The trial judge found that the seller had committed fraud and awarded the buyer the cost to rebuild the house. The seller appealed.

The Court of Appeals reversed the trial judge's decision and sent the case back for the trial judge to dismiss the claim and award the seller attorney fees. Once the buyers were aware of some rot at the house, they were required to investigate further. It did not matter that the discovered rot was minor and in a different location. According to the decision, the buyers did not have a duty to make an exhaustive invasive inspection or endlessly ask further questions. They merely had to make further inquiries after discovering the rot or at trial show that further inquiries would have been fruitless. The buyers could not get relief by asserting that the defect was worse than anticipated.

Buyers in residential transactions receive Property Information Disclosure statements from the seller according to state law. Most buyers assume that these are accurate and rely on them. Most buyers assume that they will have a remedy if the seller's disclosures are fraudulent. But the law retains that the buyer duty is to beware, inspect and to question.

But before a buyer has any remedy, he or she will have to prove diligence in light of the information that was provided. It is the buyer's burden to prove diligence, not the seller's burden to prove a lack of diligence.

A buyer should assume that there is no real remedy for any misrepresentations by the seller. The buyer has a duty to follow up on every defect that is found and every uncertainty about the property. If the buyer could have discovered the truth with diligence, the buyer will have no claim.

### **Referring Third Party Vendors**

When a real estate broker refers a third party vendor it is important to stay within the laws to minimize risk. There are times when the transaction is outside the expertise or scope of the broker and it is important to refer clients to a competent third party vendor.

When referring home inspectors, the designated broker must establish a written office policy that includes a procedure for referring home inspectors to buyer or sellers. The policy must address the consumers right to freely choose a home inspector of their choice and prevent any collusion between the home inspector and the real estate broker. The broker referring a home inspector to a buyer or seller with whom they have had a prior relationship, including, but not limited to, a business or familial relationship, then full disclosure must be provided in writing prior to the buyer or seller using the services of the home inspector according to WAC 308.124C-125(9)a When referring a client to a vendor, the vendor must have the appropriate license when it is required according to RCW 18.235.130(9)

# Chapter 8

## Use the Forms Provided

### What if it isn't a Standardized Form?

What this means to a real estate agent is that there are limitations as to what they can do under real estate law. Because of that famous "Heritage House" lawsuit an agent is limited to filling out forms that have been prepared by an attorney.

"The licensee can complete simple printed standardized real estate forms, which forms must be approved by a lawyer. It is being understood that these forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker or salesperson and without charge for the service of completing the forms."

Once we start drafting our own forms or contracts we are doing the job of an attorney.

In many of the short sale, REO, and foreclosure transactions agents have been presented in transactions with non-standardized forms. When in doubt brokers should discuss these forms with the designated broker and avoid advising buyers regarding these forms. In many cases it would be wise for a buyer to get legal advice. If the form is not standard.

The Washington State Department of Licensing wants real estate licensees to be aware that all licensees are not equipped with the proper training and experience to handle distressed properties and/or short sales. According to the Department, the most appropriate service a licensee can give a distressed property owner is to refer them to resources that can help them including HUD certified counselor or legal counsel.

### Unauthorized Practice of Law

What this means to a real estate agent is that there are limitations as to what they can do under real estate law. Because of that famous "Heritage House" lawsuit an agent is limited to filling out forms that have been prepared by an attorney. In many of the short sale, REO, and foreclosure transactions agents have been presented in transactions with non-standardized forms. When in doubt a broker should discuss these forms with the designated broker and avoid advising buyers regarding these forms. In many cases it would be wise for a buyer to get legal advice.

### Cultrum v Heritage House Realtors 1985

At issue in the Heritage House case is whether the completion of a form purchase and sale (earnest money) agreement containing a contingency clause by a real estate agent constitutes the unauthorized practice of law in violation of RCW 2.48.170.190. In 1985, the Supreme Court of Washington held that a real estate agent does not commit the unauthorized practice of law by completing a pre-printed earnest money agreement, provided the transaction is simple and the form was drafted by an attorney.

In 1980, Cultom contacted Heritage House Realtors (Heritage) regarding the purchase of a home. Ramey, a Heritage agent, showed Cultom a home owned by Smith. Cultom decided to make an offer, but was concerned about the structure of the house. She told Ramey she wanted to have the house inspected and to be able to withdraw her offer based on that inspection. Ramey prepared an earnest money agreement on a standardized form drafted by an attorney. The form contained a clause providing that in case of suit, the successful party would receive court costs and a reasonable attorney's fee. This offer was rejected, but a month later Ramey resubmitted the earnest money agreement with an addendum raising the purchase price. Cultom later discovered that the agreement did not contain the structural inspection contingency clause, so Ramey prepared a second addendum regarding this. Both addenda were on forms drafted by an attorney. Ramey merely inserted the desired modifications in a blank space, and did not select the form, as Heritage only used a single standard form.

Smith accepted the later offer and Heritage deposited Cultom's earnest money into a non-interest account. Thereafter, Cultom received the inspector's report which included a detailed list of problems including leakage, deterioration, and inadequate roof support. No major problems were found in the plumbing, heating, or electrical systems. Cultom found the report unsatisfactory and demanded the return of her earnest money. Smith claimed that there was nothing structurally wrong with the house and threatened to sue Heritage if it returned the money to Cultom. Cultom hired an attorney and Heritage eventually returned the earnest money.

Cultom sued Heritage seeking damages for loss of the use of her money. She requested an injunction restraining Heritage from engaging in the unauthorized practice of law and sought attorney fees under the Consumer Protection Act (CPA). The trial court found that Ramey's conduct constituted the unauthorized practice of law and a violation of the CPA. It enjoined Heritage from similar conduct, awarded Cultom \$178 in lost interest and \$32,000 in attorney's fees under the CPA. Heritage appealed.

The court noted that it was in the public interest to permit real estate professionals to complete standardized forms. It cited several rationales, including: (1) limiting costs to buyers and sellers; (2) public convenience; (3) allowing licensed real estate professionals to participate in an activity in which they have special training and expertise; and (4) the interest of such professionals in drafting form earnest money agreements which are incidental and necessary to their main business.

The Court put several restrictions on the completion of forms by real estate professionals. The court held that a real estate broker or salesperson is permitted to complete simple, printed standardized real estate forms that are approved by an attorney, provided the forms are used only on simple real estate transactions that arise in the usual course of the broker's business. Further, the completion of such forms must be done at no charge. The court then held that Ramey's actions in completing the earnest money agreement did not constitute the unauthorized practice of law. It also lifted the injunction from Heritage.

The Court also noted that the standard of care necessary for completing such forms and their addenda was that of a practicing attorney. The court addressed Ramey's failure to include a subjective right in the contingency clause contained in the second addendum regarding a satisfactory inspection. It stated that "an attorney is liable for all losses caused by his or her failure to follow the explicit instructions of the client." It also noted that "when a broker undertakes to practice law and prepares a contract at variance with the client's instructions, he or she is liable for negligence." The court held that because Ramey was practicing law and failed to comply with Cultom's wishes, she was liable for all damages caused by her negligence. Thus, the court affirmed the award of \$178 in lost interest.

Over 30 years ago when this case went to court, most purchase and sale agreements were only one or two pages. Today, there are over 100 addendums to cover just about any issue that occurs in a real estate transaction. It is important to choose to use the preprinted forms that were written by an attorney when writing up a purchase and sale agreement. Avoid using blank addendums. By drafting forms and contracts, an agent could be considered to be practicing law.

# Chapter 9

## Advertising Requirements

### Advertising Laws

License law has required that the name of the real estate firm as licensed be on all advertising. But, many real estate agents were putting the name of the office so small and hidden in their advertising that it was nearly impossible to identify the actual real estate office where their license was hanging. The new license law changes in 2010 specify that the Firm Name must be on all advertising so that it is very clear to the consumer.

A firm must advertising using their firm name (or an assumed name registered with the state) as licensed. WAC 308-124B-210

- (1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.
- (2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:
  - (a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.
  - (b) Not use a name, title, or brand which suggests a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."
  - (c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."
  - (d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

All advertising by an individual licensee or a licensee operating as a team must always have the firm name unless the team name has been registered with the state as an "assumed name."

The firm name must be "clear and conspicuous" in any advertising.

- This means the representation or term being used is of such a color, contrast, size or audibility is presented in a manner so as to be readily noticed and understood. RCW 18.85.011.
- It is a violation of license law if a licensee advertises in any manner without including the firm name or assumed name as licensed in a clear and conspicuous manner. RCW 18.85.361(8).

This is a consumer protection issue because it is important for the consumer to recognize the firm as licensed and have appropriate contact information should they want to contact the DOL or the firm. Many agents don't use their firm name on their internet advertising.

If the broker or team has an "assumed name" that was registered by the designated broker, then that broker or team can use the approved name and is not required to have disclosure of the firm on advertising. For example, a team might have the Double Team name instead of using the firm name or the designated broker has a group of agents working on another particular focus of real estate and does not want the firm name used.

This is the link to the video prepared by the Department of Licensing regarding the way agents can comply with the advertising guidelines!

[YouTube video about advertising from Real Estate Dept of Licensing](#)

## Social Media Advertising Guidelines

Licensed entities can use the internet in multiple ways to contact consumers about real estate services and to advertise properties or their services. More ways to use the internet are likely to be invented. Disclosure will help to ensure that online consumers know when they are dealing with a licensed entity, who they are and where their primary business office is located.

### Disclosure

**Licensed Firm Disclosure** should contain the following information:

- The firm's name or assumed name(s) as licensed or registered with WA Real Estate Dept of Licensing. If not a licensed firm doing business in the State of Washington, the city and state in which the firm is located.

**Licensee Disclosure** should contain the following information:

- The licensee's name as shown on their license as issued by the WA Real Estate Dept of Licensing.
- The registered firm name or assumed name in which the licensee is affiliated as registered with WA Real Estate Dept of Licensing.

**Full Disclosure** refers to both "licensed firm disclosure" and "Licensee disclosure."

### Internet Guidelines

All internet related advertising that consumers can view or experience as a separate unit should require full disclosure. The burden of proof of such full disclosure falls on the licensee, the firm and the designated broker when addressing a consumer complaint. This disclosure does not apply once an agency relationship has been established with a buyer or seller. Examples of online communications include:

#### Social Media and Banner Ads

Full disclosure should be prominently displayed and easily understood and be no more than "**One Click Away**" from the viewable page. Each real estate firm should have and maintain a written policy regarding their licensee's use of social media. Banner ads must have one click away disclosure unless it is on the ad.

#### The Web

Whenever a licensed entity owns a website or controls its content, every viewable page should include full disclosure. A viewable page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages. If you give permission for a 3<sup>rd</sup> party to advertise your listings, it is important to maintain regular and thorough oversight to ensure that the information is correct. It is important to adhere to copyright laws.

#### Email, Newsgroups, Discussion lists, Bulletin Boards

Such formats should include full disclosure at the beginning or end of each message. This would not apply to communications between a licensee and a member of the public provided that the member of the public has sent a communication to the licensee and the licensee's initial communication contained the disclosure information required above.

### **Instant Messages**

Full disclosure is not necessary if the licensed entity provided the written full disclosure via another format (e.g. Email or Letter) prior to providing or offering to provide licensable services.

### **Chat**

Full disclosure prior to providing or offering to provide licensable services during the chat or in text visible on the same webpage that contains the chat session.

### **Multimedia Advertising**

Full disclosure should be visible as part of the advertising message which includes Web based, executable email attachments and Video.

## **New Guidelines Brochure for Real Estate Brokers**

The Dept of Licensing for WA State published an Advertising Guidelines brochure for real estate Brokers . It is available at:

### **Procuring Prospects Online**

The internet poses additional potential problems that may require caution on the part of licensees when procuring prospects.

- A. Licensees maintaining individual websites should ensure that when listings expire, sell, or have a price change that the information is updated in a timely manner.
- B. Websites maintained by the MLS should be updated in a timely manner
- C. Information provided to third party websites should be updated in a timely manner. The licensee should provide written communication of any change of listing status to the publisher in a timely manner.
- D. Licensee shall not give the impression that they are licensed in jurisdictions where they have no license.
- E. Licensed entities should not advertise other licensed entities' listings without written permission. If given, the licensee should not alter the online display or any informational part of the listing without written permission of the Designated Broker or Listing Broker.
- F. Metatags are descriptive words hidden in a web site HTML code that search engines use to index the site. Most sites use common words such as real estate, Washington, city names, homes, houses, etc. Those uses are fine. Some website owners have also inserted competitor's names into the metatags, so that when a potential customer searches for their site, the competitor's site will also come up as a math. This should not be done. Courts have ruled that this constitutes trademark infringement.
- G. Licensees shall periodically review the advertising and marketing information on their website and update as necessary to assure that the information is current and not misleading.

These guidelines are subject to change at any time and as practice on the internet evolves, additional guidelines may be added. Licensees should be aware that all statues and rules respecting advertising apply equally to the internet. This would include websites, email and any other potential online identification, representation, promotion or solicitation to the public that is related to licensed real estate activity. Licensees advertising on the internet should seek legal advice regarding compliance with local, state and national regulations. Compliance with WA Real Estate Dept of Licensing guidelines does not ensure compliance with other jurisdiction guidelines, laws or regulations.

## Syndication of Listings not TV Shows

With the click of the mouse a broker's listings can be spread all over the internet on an untold number of 3<sup>rd</sup> party websites. The challenge is that the agent often does not always know where they are posted and doesn't keep the information up to date and accurate.

When a broker takes a listing of a property, it is uploaded according to the rules, to the local MLS. The largest MLS in Washington State is the NWMLS but it is not the only MLS in Washington.

Disclosure of firm and broker licensed name must occur within "One Click."

Most real estate agents assume that Zillow scoops listings from the NWMLS and post listings and changes on a regular basis. This is NOT the case. Often it is the real estate firm that uploads the listings to sites like Zillow. The real estate firm may also send listings to other sites, as well.

There are times that brokers and firms post their listings on distribution sites like Postlets. This site is just a portal that collects a network of sites and sends the listing out to those sites. These sites can be local, national or international. Most real estate agents and their consumers have never heard of or even visited these sites. Real estate agents in Washington State are technically responsible for inaccurate information posted about listings. But, that is a challenge when you look for a listing that has been posted to syndicated sites and it is nowhere to be found.

So why do syndicated sites exist? Basically.... There are a number of reasons. Here are a few.

- To make money selling advertising...

- To sell ads back to real estate agents....

- To collect prospect info and resell it back to real estate agents as lead generation.

- To drive traffic to other sites... often not real estate.

Try a search for homes in your town. A list more than double the number of homes shown for sale on Zillow might come up... but that list might include homes in all different nearby locations. The very first house I clicked on under "homes for Sale" was sold. So though it was marked sold, it showed up in the search as "for sale."

The first site I clicked on from the Postlets site is based out of Spain. It is there to collect emails from pop up ads to boxes on the side of the site. They all want the consumer to enter an email and register. The benefit is that they consumer might get a newsletter or information on newer postings.

Brokers are required to also make sure that there is disclosure including their firm name as licensed clear and conspicuous and “**One Click Away.**”

### **Google your Listings**

You can go to the search on Google (and/or any other search engine) and search the address of your listing to see where it comes up on the internet. That way you can see some syndicated sites that have it listed that you might not be aware of. In addition, you will find out if all the syndicated sites come up in the search. See where your name as the listing agent shows and how other agents are being sold lead generation using your listing.

This is the link to the video prepared by the Department of Licensing regarding the way agents can comply with the advertising guidelines!

[YouTube video about advertising from Real Estate Dept of Licensing](#)

# Chapter 10

## Risk Avoidance

### A. Flood Insurance

Flood insurance is administered by the National Flood Insurance Program (NFIP.) Real estate clients need to contact flood insurance agents to get information on maps and insurance rates. Over the recent years, the maps have been updated. It may affect clients without their knowledge! With all the drastic floods and storms in the country in the past year, we may see some other changes to the national program.

### B. Subject Matter Exceeding the Scope of a Broker's License and Making Competent Referrals to Third-Party Vendors

When a real estate broker refers a third party vendor it is important to stay within the laws to minimize risk. There are times when the transaction is outside the expertise or scope of the broker and it is important to refer clients to a competent third party vendor.

When referring home inspectors, the designated broker must establish a written office policy that includes a procedure for referring home inspectors to buyer or sellers. The policy must address the consumers right to freely choose a home inspector of their choice and prevent any collusion between the home inspector and the real estate broker. The broker referring a home inspector to a buyer or seller with whom they have had a prior relationship, including, but not limited to, a business or familial relationship, then full disclosure must be provided in writing prior to the buyer or seller using the services of the home inspector according to WAC 308.124C-125(9)a

It is important to note that few brokers refer prospects to more than one lender. HUD found that about 70% of borrowers get a loan from the first lender they met with. It is important to consider referring more than one third party vendor.

There are times that a real estate agent with a good-hearted attempt wants to help a client but the sale is beyond the knowledge level of the agent. It is important to acknowledge and recognize our own level of expertise and refer clients to others that can better serve the needs of the clients. A real estate agent cannot know everything! If you are primarily working in the city selling condominiums, it may not be wise to head to sell a farm in Skagit County. Or, if you live and work in Vancouver, WA, it may not be wise to sell a property on Lake Washington Waterfront.

### C. Signatory Authority for Clients

Often the signatory authority for property is not the actual owner. The escrow and title company can give a real estate broker guidance on who has the authority to sign for a real estate transaction.

1. Power of attorney: the power of attorney document has language in it that must meet certain requirements. Escrow and title looks for the key word "sell, convey, borrow" to be in there. Always have the form sent to the escrow/title company ahead of time to be reviewed to be sure it will work. If it is

- a durable power of attorney and the person is incapacitated, the title company would need a form from the clients doctor in order to use it.
2. Trust: A copy of the trust originally formed would grant the powers per the RCW and list the powers the trustee has and who they are, or whether there is a co-trustee, or alternatives
  3. Corporation: The client will provide a copy of the articles of incorporation which will indicate powers and who has authority to sign.
  4. LLC: the paper of formation of the LLC will designate who will sign, and manage the LLC. If not, then all parties of the LLC (that are listed on website) must sign, including their spouses, (even if spouses are not listed on LLC)
  5. Guardian: State of Washington court system appoints a guardian. Guardian cannot do anything w/o petitioning the court for approval. Title company will then view court records for approval and note in title as to who can sign documents.

### **Don't Expect Escrow to Draft Documents**

Three are times when the buyers need to sign another addendum because of changes because of the home inspection. The seller may agree to include something or pay off something not originally agreed to in the original purchase and sale agreement. Real estate agents negotiate the purchase and sales agreement. Escrow takes the information on the agreement to create the escrow instructions. Escrow is a neutral third party that does not handle negotiations between the parties.

Real estate agents sometimes expect escrow at the closing table to draw up addendums or get signatures on changes on the purchase and sale agreement. It may seem convenient to let escrow handle those signatures while the parties are at the table. But, escrow is NOT licensed to practice real estate and cannot under their position to obtain those signatures.

## **D. Consumer Protection Act**

### **Edmonds v John L Scott**

Cora E. Edmonds signed a buyer/broker agreement with an agent of John L. Scott Real Estate, Inc. The agent showed her a house listed by another Scott agent and, after reassurance from the agent that a basement drainage problem would be fixed and warranted, Edmonds signed an earnest money agreement for the purchase of the house.

As the closing date approached, the basement was still wet, and Edmonds demanded the return of her earnest money. Scott's general counsel unilaterally determined, without investigation, that the drainage problem had been fixed. He declared Edmonds in default and disbursed half of her earnest money to the sellers and half to the agents involved in the transaction. Edmonds sued.

The trial court found that John L. Scott breached its fiduciary duty with respect to its disbursement of the earnest money, breached the earnest money agreement, was negligent in the preparation of the earnest money agreement, and committed two violations of the Consumer Protection Act (CPA). The court awarded Edmonds damages, including \$10,000 in exemplary damages for each CPA violation, and awarded her attorney fees and costs.

Pursuant to standard company practice, Edmonds' file was turned over to Scott's general counsel for handling. Without conducting any factual investigation into Edmonds' complaints regarding the water in the basement, and without undertaking to ascertain whether any warranties covered the work, Scott's counsel unilaterally determined that the drainage problem had been remedied. Less than a week later, the basement flooded again. Nonetheless, Scott's counsel reiterated to Edmonds' counsel that the drainage problem had been fixed. When Edmonds refused to close on the ground that the water problem had not been fixed, Scott's counsel declared her in default and directed Scott's trust department to disburse half of her \$5000 earnest money to the sellers and half to Tjoa and Zimmerman.

The court found that Zimmerman failed to disclose material facts by failing to disclose the extent of the drainage work that had been performed prior to Edmonds' signing the earnest money agreement and by presenting a property information form containing statements she and Tjoa knew were false. These acts by Zimmerman, the court found, violated the CPA. The court also found that Zimmerman breached the earnest money agreement by failing to deliver the warranties as to the drainage work. In addition, the court found that Scott's disbursement of the earnest money constituted conversion, a breach of fiduciary duty, and a violation of the CPA.

Disbursement of the earnest money without a written release is permitted only when the agreement terminates according to its own terms. An agreement terminates by its own terms only upon the happening of an event specifically identified in the agreement as one that will cause such termination. Edmonds' earnest money agreement enumerates the circumstances under which the agreement automatically terminates. None of those enumerated circumstances encompasses the events leading to Edmonds' decision not to close. The agreement did not terminate by its own terms. Instead, there was an actual dispute as to Edmonds' entitlement to the funds.

To establish a violation of the CPA, a plaintiff must establish the following elements: "(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; and (5) causation.

The third element of a CPA violation, public interest impact, is clearly present here. The public interest is impacted by a private dispute where there is a likelihood that "additional plaintiffs have been or will be injured in exactly the same fashion. John L. Scott's comments that "dozens, perhaps hundreds" obviously satisfy this test. Rather, they are part of a practice Scott follows in multiple transactions and fall squarely within the broad scope of the terms "trade" and "commerce" under the CPA.

The contract does not disclose, nor do Scott's agents inform purchasers, that in the event of a dispute as to whether the purchaser is in default, Scott's general counsel unilaterally determines whether there was a default and how the earnest money is to be disbursed. It also does not disclose that Scott's general counsel is the sole determiner of whether the matter needs investigating and that the purchaser's complaints may be reached with no investigation whatsoever.

The problem had not been corrected, as evidenced by the continued flooding of the basement after Scott's counsel declared the problem fixed and Edmonds in default. The unfairness of this practice is self-evident. Further, as Scott acknowledged, it followed this policy dozens, perhaps hundreds, of times in a period of four years, so the practice has the capacity to deceive a substantial portion of the public. Scott may simultaneously act not only as the seller's agent but also in furtherance of its own financial interests as well.

Here, Edmonds lost \$5,001, and the loss was caused by Scott's unfair practices. All of the elements necessary to find a CPA violation are thus present with respect to Scott's practice of disbursing earnest money.

# Chapter 11

## Property Management

### Designated Broker responsible for property management

When a broker is performing property management, the ultimate responsibility falls on the designated broker. This can also include properties owned by the broker. The broker has a higher duty and may be handling consumer funds. The consumer could possibly go to the firm if there is a problem.

When marketing a property owned by a broker, it is only required to disclose that the broker is licensed. But, if there is a problem, the tenant could go after the real estate firm the broker is licensed under. So it is important to make sure that the designated broker is aware of all property management activities.

### The Designated Broker must be in the Know!

All properties managed by the firm must be supported by a written management agreement signed by the Designated Broker and the owner according to WAC 308-124D-215

Property management agreements must include:

- The firm's compensation
- The type of property and number of units
- Whether or not the firm is to collect and disburse funds and for what.
- Authorization if any to hold security deposits
- Frequency of submitting summary statements to the owner

Each owner of property managed by the firm must be provided a summary statement as provided in the property management agreement for each property showing the carried balance, total rent receipts, owner contributions, other receipts, itemization of all expenses paid, number of units and ending balance.

The firm may provide other service for the owners of properties with full disclosure of Broker's relationship with any parties providing services.

Any amendment or modification to the property management agreement must be in writing.

A Designated broker may delegate the responsibility of signing each property management agreement or addendum to a managing broker or branch manager.

An employee who is not licensed as a broker can do a limited number of property management activities of homes they don't own when working for a managing broker. It is important to also review the guidelines for unlicensed activity in the next section. An unlicensed person cannot advertise or tell the public that they are providing property management services or hold or authorize disbursement of trust funds. But, the unlicensed person can do the following.

- Delivering a lease/rental agreement
- Receiving a check made out to the real estate firm
- Showing a rental unit.

- Executing rental agreements under the direct instruction of the managing broker.
- Providing information about the rental unit
- Assisting with the administrative, clerical, financial or maintenance tasks.

## **Property Management Trust Funds**

Trust accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285.

Interest-bearing accounts may be established for Property Management funds if in writing for an individual owner established in writing with interest to accrue to the owner and for only damage or security deposits for tenants of residential properties managed by the firm with interest paid to the owner under certain provisions under the Landlord-Tenant Act RCW 59.18.270.

Mortgage payments for the owner are not permitted to be deducted from the trust account if it contains security deposits or funds belonging to more than one client.

A single check maybe be payable to the firm for property management fees and commissions if supported by a schedule of commissions. Property management commission shall be withdrawn at least once monthly.

When the property management agreement is terminated, the funds shall be disbursed according to the agreement including the damage or security deposited.

# Chapter 12

## Fraud in Real Estate Transactions

As a real estate agent or a loan officer in Washington State, it can be hard sometimes to imagine that there could be a criminal sitting next to you at the office, across the table during a real estate transaction or online processing a mortgage loan. But, fraud is rampant in our industry. Money and property are being stolen almost invisibly. The only currency is paper and documents. It is quiet and very clean with a pen or a computer mouse. Most people involved in fraudulent transactions don't experience a great amount of guilt. In many cases, people are unaware of the crime committed and the consequences of their actions. No one *seems* to get hurt. There are no deadly weapons. The victim is not even bleeding.

Ignorance does not "save" you in our court systems. If you are sitting in court and you say you didn't know you were involved in a fraudulent transaction, you don't get a free pass to get out of jail.

What echoes throughout real estate offices and mortgage companies is the excuse that "everybody is doing it." We heard that when we were children but it didn't save us when we did something wrong.

The FBI has placed "White Collar Crime" as a seventh on the top ten list of investigative priorities. The FBI categorizes white-collar crimes as deceit, concealment, or in violation of trust and are not dependent on the application or threat of physical force or violence. Such acts are committed by individuals and organizations to obtain money, property, or services to avoid the payment or loss of money or services, or to secure a personal or business advantage. White-collar criminal activities can include money laundering, bank fraud, and fraud against the government.

According to the FBI, mortgage fraud is a material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan. It is the intentional enticement of a financial entity to make, buy or insure a mortgage loan when it would not otherwise have done so, had it possessed correct information. If the misrepresentation alters a decision, then misrepresentation becomes fraud, which is a state and federal crime punishable by up to 30 years in prison and \$1,000,000 fine.

In many cases, the opportunity to make money quickly and quietly becomes attractive to people that are scheming. Sometimes, people see others as easy targets.

Often real estate agents, mortgage brokers and investors get caught up in transactions that can easily make them money with only a few twists and turns. They don't see a hurt victim and use the "everybody is doing it" reasoning to justify fraud. Some perpetrators are of the criminal mindset and others just go along because it appears to be safe and quasi legal. Not very many agents and lenders have been "caught" but the Washington State Department of Financial Institutions and the FBI Financial Institution Fraud Unit are busy at work. You could be part of their next investigation. Do you look good in an orange jumpsuit?

There are a number of schemes in the market that are fraudulent. It is important not to participate in any transaction where there is not full disclosure or participate in any possible fraud.

The most common scheme in the market today is Wire Transfer Fraud. Hackers will get into an agents email and follow it. They will harvest the information on the buyer, escrow and title and then just before title send an email to the buyer to deposit or wire funds into a different account than the escrow instructions. Once wired, the funds are completely gone. One clue is sometimes the escrow email will be a gmail account. This is so common today and there is no way for the agent or escrow to know the buyer has received an email with different escrow instructions. So EDUCATE Your buyer!

When there are foreclosures in the market “short sale flopping” becomes popular. This is where a buyer makes an offer on a short sale and prior to closing attempts to find another buyer. The buyer might market the property, for example, on craigslist.com for a higher price that is negotiated with the bank. Then the first buyer closes the short sale and at another time, either the same day or up to a few months later. The attempt is to deceive the lender, the buyer is unlicensed and cannot market the property that he doesn’t own, and the second buyer is often not informed about the previous short sale.

There are numerous foreclosure rescue schemes. Red flags for fraud and schemes include guarantees to stop foreclosures, a promise that the homeowners can buy the house back, promise to transfer the title or even eliminate the mortgage.

Other types of fraud include:

- The Nigerian 419 Advance Fee Fraud where a person is asked to send some fee to process a transaction for an out of country buyer to purchase a property, to get a million dollars out of a country, or to start the process to get an inheritance from a relative that perished in the tsunami. Those are only a few examples. In the case of the real estate example, they often offer higher than asking price and promise higher commissions.
- Mortgage Fraud where a lender does anything from falsifying loan documents, creates fake employment verifications, and uses inflated appraisals. There are about a thousand ways to commit mortgage fraud.
- Mortgage elimination where a homeowner with a mortgage is convinced that the mortgage can disappear with the payment of a fee and the signature on some documents.
- Lease and Rental fraud where a listing, vacant house or a rental currently on the market is advertised by a fake owner who offers the property much less than market rent value and asks the prospective tenants to fill out an application and send along a deposit.

Two very large cases of fraud in Washington State have received national attention in 2010-2013.

The Hellickson Company boasted about being the nation’s leading firm specializing in short sale properties. Michael Hellickson started his real state career in 1991, before he even graduated from high school. With over 417 Short Sales, and more than 325 REOs in under 10 months, he boasted as being in the top 1% of all agents nationally! Hellickson sold over 473 homes in less than 8 months according to his website. But his real estate career in Washington State ended after a long investigation by the Washington State Department of Licensing.

Shawn Portmann was involved to such a great extent in loan fraud that an entire bank in Pierce County closed. He was touted as the most successful loan officer in the country. He boasted that he could get anyone a loan to buy real estate no matter their circumstances.

## Conclusion

*The information contained in this curriculum satisfies the Core Curriculum requirement. Any of the legal issues discussed should be also covered with your designated broker or corporate attorney. If you ever have a question... ASK IT! Often in the process of chasing a commission or hoping for a client, agents skip over details that could blow up the entire transaction.*

# The Legal Edge....Current Legal Topics in Real Estate

## Quiz

### Law of Agency

1. Changes were made to the Law of Agency primarily changing the term "Licensee" with "Broker." True / False
2. A statutory duty means that an agent's responsibilities are spelled out in the Law of Agency. True / False
3. Dual agency can ONLY be created by two agents shaking on it. True / False
4. When a broker represents both seller and buyer and there is full disclosure there is a dual Agency representation True / False

### Organizational Structures

5. The word "team" is covered in a section of real estate license law. True / False
6. Real estate agents are typically independent contractors but they pay for and get benefits under Workers Comp. True / False
7. An unlicensed assistant **can or cannot** (choose one) show properties to prospective clients. True / False
8. An unlicensed assistant **can or cannot** (choose one) check on the progress of a loan on a transaction. True / False

### Legislative and Legal

9. Research by HUD has shown that homebuyer education has improved homeowners financial decision making. True / False
10. In early 2018 a law went into effect in WA State that focuses on the 15 watersheds affected by the Hirst Decision. True / False

### Consumer Complaints

11. When there are multiple offers, the listing agent only has to provide the seller with the top three offers. True / False
12. The designated broker at the firm is responsible to maintain a complete transaction log of all transactions including emails. True / False

### Fair Housing and Anti Discrimination

13. The Civil rights Act was passed almost 150 years ago making racial discrimination illegal when purchasing property. True / False
14. Sexual orientation is a protective class in Washington State. True / False
15. Washington Law on Discrimination only covers housing. True / False
16. Perceived HIV **is / is not** (circle one) considered a protected class under Washington State law.
17. Handicap was amended to read as "disability" under the Washington Law. True / False
18. The Washington State Human Rights Commission administers the Discrimination Law. True / False
19. Seattle discrimination laws protect persons from discrimination based on Gender identity. True / False
20. An occupant cannot be expelled from occupancy because of religious preference. True / False
21. Choosing one buyer over another based on their religion or race is a violation of Federal and State discrimination laws. True / False

### Real Estate Practices

22. One of the most common complaints about real estate brokers is that they didn't \_\_\_\_\_.
23. In the NWMLS a real estate agent **can or cannot** (circle one) promote a listing before being turned into the MLS.
24. A buyers "love letter" often appeals to a seller to choose the buyer because of their familial or marital status. True / False

- 25. In a multiple offer situation, the seller can discriminate against selling to a buyer because of gender lawfully. True / False
- 26. A seller can reject all offers in a multiple offer situation True / False
- 27. A seller needs to be careful not to counter two offers simultaneously without selling the house to two parties. True / False
- 28. A broker must present all written offers to the seller. True / False

Property Disclosure

- 29. Property Information Disclosure Law limits the seller's liability True / False
- 30. The Douglas v Visser case focused on: Circle one A Earnest money B Commission C Disclosure D Contract
- 31. The recent cases demonstrate the importance for buyers to get home inspections and follow up on questionable issues. True / False
- 32. The buyers should not assume and rely on the accuracy of the information on the Property Information Disclosure form. True / False
- 33. All firms must have a written office policy about the referral of Home Inspectors. True / False

Use the Forms

- 34. The Heritage House case made it clear the real estate agents can draft any type of real estate contracts. True / False
- 35. The Heritage House Case reminds agents they can only fill out preprinted forms prepared by an attorney or they are practicing law. True / False

Advertising

- 36. The real estate agent name as licensed must be on all real estate agents advertising. True / False
- 37. The law says that all ads for agents must have the firm name. True / False
- 38. One Click Away is the practice of disclosing the price of a listing within one click of the online advertising. True / False

Risk Avoidance

- 39. Real estate brokers should inform buyers about the availability of flood insurance. True / False
- 40. Your real estate firm must have a policy that deals with third party referrals of home inspectors. True / False
- 41. A husband can sign a real estate contract because we are a community property state. True / False

Property Management

- 42. Under the Landlord Tenant Act only the landord must provide written notice prior to entry in the unit. True / False
- 43. A tenant has the right to request one free copy of the \_\_\_\_\_
- 44. An out of state landlord must have a representative in the county where the landlord has tenants. True / False
- 45. Landlords are required to provide tenants with information warning about health hazards associated with exposure to \_\_\_\_\_

Fraud in Real Estate Transactions

- 46. Ignorance does not save you in a court of law. True / False
- 47. A real estate agent could jeopardize their real estate license or even go to federal prison for committing acts of Fraud. True / False
- 48. One popular foreclosure rescue scheme promises to eliminate the mortgage. True / False
- 49. A lender falsifying loan documents is considered fraud even though underwriting ok's the loan. True / False
- 50. The biggest fraud that is hitting real estate transactions is wire fraud. True / False

## Quiz for The Legal Edge.. current legal topics and Core 2018-2019

You must attach the Evaluation to this Answer Sheet to receive clockhours.

1		31	
2		32	
3		33	
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I attest that I have read the materials and have answered the questions. The mandatory evaluation is attached!

**Print Name** \_\_\_\_\_ **Company** \_\_\_\_\_ **Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

PROFESSIONAL Direction, 13148 Holmes Pt Dr NE, Kirkland WA 98034      Email: [clockhours@gmail.com](mailto:clockhours@gmail.com)



# Mandatory Evaluation

Did you read the material in the booklet on this date? YES / NO  
 Did you complete the quiz and attach answer sheet? YES / NO  
 Did you pay Tuition (\$50 for 7.5 hrs) YES / NO  
 Did you fill out and sign this form? YES / NO  
 Paid with credit card by using the payment link on front of website.

Why did you choose to take this course? Topic? Time? Cost? Ease? Other?

A "clock hour" is 50 minutes. This 7.5 hour class should take about 6hrs 15 min. How long did it take you to complete the course? \_\_\_\_\_

	No			Yes	
Will the material you learned improve your performance?	1	2	3	4	5
Were the course materials easy to follow?	1	2	3	4	5
Were the course materials relevant to your profession?	1	2	3	4	5
Were your objectives met by attending the class?	1	2	3	4	5

What are 3 things that you learned from the course?

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

## The Legal Edge... current legal topics in real estate Includes Core 2018-2019

Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
Twitter name @	Email	
License Renewal Date	Date Class taken	Notes

*Thanks for taking this class! I really appreciate the agents that take clockhours from my school*

**Professional Direction, 13148 Holmes Pt Dr NE, Kirkland, WA 98034 phone: (425) 821-8585 email:**

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**www.clockhours.com**