



# Brokerage Management

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 THIRTY (30) CLOCKHOUR CLASS. It is written using the curriculum provided by the Department of Licensing.
2. The course has been divided up into chapters. In Washington State a “clock hour” is 50 minutes. There are questions about each session. There is a separate workbook.
3. You must complete all the questions in the workbook and the Final Exam to receive clockhours.
4. **Answer** the questions directly in the workbook or on the answer sheets.
5. If you have any questions regarding the material or the questions, don’t hesitate to email Natalie Danielson.
6. **SCAN and EMAIL** the entire workbook or the answer sheets along with the Mandatory Evaluation to Professional Direction. Our email is: [clockhours@gmail.com](mailto:clockhours@gmail.com)
7. You do have the option to mail by US mail the workbook and mandatory evaluation.
8. The certificate will be emailed ASAP after receipt of quiz and evaluation.

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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# Brokerage Management

Chapter	Topic	
1 4 hours	<p><b>Broker Relationships</b></p> <p>Requirements for licensure List the requirements to get a license in Washington State</p> <p>Duties of a Designated Broker, Managing Broker, Broker Know the duties and responsibilities of licensees</p> <p>Agency representation Understand agency representation and duties as a sellers, buyer's and dual agent</p>	<p>Read the material.</p> <p>Review RCW 18.85 and RCW 18.86.</p> <p>Answer Chapter 1 quiz in workbook</p>
2 4 hours	<p><b>Broker Supervision and Liabilities</b></p> <p>Structure of a Firm</p> <p>Employee vs Independent contractor Know laws regarding independent contractor status Explain the requirements for Workers Comp insurance</p> <p>Broker Supervision Know the legal responsibilities of a Designated Broker, Managing Broker, Broker, and Branch Manager</p> <p>Responsibilities within the firm Understand the authority of a Designated Broker to delegate duties Know the guidelines for assistants Know the importance of a Policy Manual and required elements Know the importance of display of licenses and the transfer to another firm</p>	<p>Read the material.</p> <p>Review RCW 18.85 and RCW 18.86.</p> <p>Review the Policy Manual for the office where you are licensed.</p> <p>Answer Chapter 2 quiz in workbook</p>
3 4 hours	<p><b>Property Management</b></p> <p>Understand the requirements for Property Management Agreements</p> <p>Create reports for Property Management Funds</p> <p>Marketing and Screening Tenants</p> <p>Explain importance, termination, and concessions in Lease Agreements</p> <p>Know the difference between actual and constructive Eviction</p>	<p>Read the material.</p> <p>Review RCW 59.18</p> <p>Answer Chapter 3 quiz in workbook</p>
4 4 hours	<p><b>Recruiting and Interviewing</b></p> <p>New Agent recruiting Develop a recruiting plan for new licensees</p> <p>Recruiting experienced Agents Develop a recruiting plan for experienced licensees</p> <p>Interviewing Recruits Identify prohibited interview questions for recruits</p> <p>Broker and Firm records Identify required employee records</p>	<p>Read the material.</p> <p>Review your independent contractor agreement.</p> <p>Answer Chapter 4 quiz in workbook</p>
5 4 hours	<p><b>Training and Productivity</b></p> <p>Orientation Know the importance of an orientation for all new recruits</p> <p>Continuing Education</p>	<p>Read the material.</p> <p>Answer Chapter 5 quiz in workbook</p>

	<p>Identify required continuing education for brokers  Discuss the different corporate training programs  Know about the REALTOR Association and Ethics training</p> <p>Productivity  Understand the independent nature of real estate brokers  Develop a plan to support the efforts of the affiliated licensees  Have a plan for communication within the office or in meetings</p>	
6 2 hours	<p><b>Advertising within the Laws</b>  Washington State Laws and Rules  Explain the regulations governing identification of the firm in all advertising  Understand the use of assumed names and teams</p>	<p>Read the material.</p> <p>Review RCW 18.85 and RCW 18.86 on advertising and misrepresentation and assumed names.</p> <p>Answer Chapter 6 quiz in workbook</p>
7 4 hours	<p><b>Legal Boundaries</b>  Know the laws and responsibilities under the following:  Fair Housing  American Disabilities Act  Antitrust  RESPA  Title Insurance  Dispute Resolutions  List the options when there is a dispute</p>	<p>Read the material.</p> <p>Review the laws in this chapter.</p> <p>Answer Chapter 7 quiz in workbook</p>
8 4 hours	<p><b>Trust Accounting Record Keeping and Fraud</b>  Handling Trust Funds  Understand the collecting, receipting, depositing, recording and disbursement of Trust funds  Auditing a Real Estate Firm  Be able to list what the auditor evaluates during a routine audit including the records retained.  Investigation insights  Identify some of the primary issues that auditors recommend  Real Estate Commissions  Be able to compute a real estate commission  Fraud in Transactions</p>	<p>Read the material.</p> <p>Review RCW 18.85 regarding trust funds and records.</p> <p>Answer Chapter 8 quiz in workbook</p>

# Chapter 1

# Broker Relationships

## Section Objectives

Requirements for licensure

List the requirements to get a license in Washington State

Duties of a Designated Broker, Managing Broker, and Broker

List the duties of a Designated Broker, Managing Broker, Broker

Agency Representation

Understand agency representation and duties as a seller's, buyer's and dual agent

## Requirements for Licensure

Real estate agents are licensed in the states where they work. There is no national license. When a person is licensed as a real estate broker in Washington State, there are different license classifications.

To become a **Real Estate Broker**, the requirements according to RCW 18.85 include but are not limited to:

- Be at least 18 years old.
- Have a high school diploma or equivalent.
- Successfully complete 90 hours of approved real estate education within 2 years before applying for the exam. This education must include: A 60-hour course in Real Estate Fundamentals and a 30 hour course in real estate Practices.
- Pass the broker's exam.
- Within the first two years of licensure, the broker must complete 90 hours of continuing education including the Advanced Real Estate Practices and Real Estate Law Classes.

To become a **Real Estate Managing Broker**, the requirements according to RCW 18.85 include the following. There are some exceptions for brokers from other states, others in the profession, and attorneys, for example. To be the Designated Broker of a firm or a branch manager or be delegated responsibilities within the firm, a person must hold a managing broker's license. Any broker can obtain a managing broker's license without taking on other responsibilities.

To qualify for a managing broker's license, you must:

- Be at least 18 years old.
- Have a high school diploma or equivalent.
- Provide proof you have at least 3 years of full-time experience as an active real estate broker, **or** other qualifying experience as described in WAC 308-124A-713
- Successfully complete 90 hours of approved real estate education within 3 years before applying for the exam. This education must include:
  - 30 hours of brokerage management
  - 30 hours of business management
  - 30 hours of advanced real estate law
- Pass the managing broker's exam.

# Duties of a Licensee

## Agency Relationship Definition

According to the Law of Agency RCW 18.86 the definition of "Agency Relationship" means:

"The agency relationship created pursuant to this act or by written agreement between a broker and a buyer and/or seller relating to the performance of real estate brokerage services by the broker."

"Real estate brokerage services means the rendering of services for which a real estate license is required under chapter 18.85 RCW."

## General Duties of a Licensee

Within the Law of Agency, there are statutory duties prescribed for agents generally when working with the consumers. Regardless of whether the broker is an agent, a broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may NOT be waived according to the Law of Agency.

1. "To exercise reasonable care and skill."

*The real estate broker must protect the interests of the consumer and be held to a standard of care in the industry.*

2. "To deal honestly and in good faith."

*The real estate broker must, at all times, be truthful and consider the interests of the consumer.*

3. "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."

*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 offer or subject to the failure of the first offer. The real estate broker has the responsibility to provide the seller with any other offers or written communication regarding a transaction.*

4. "To disclose all exiting 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 the licensee has not agreed to investigate."

*The agent must disclose existing material facts that the agent is aware of that would affect the buyer's decision to buy or how much the buyer would pay. Note the definition of material facts in the Law of Agency.*

5. "To account in a timely manner for all money received from or on behalf of either party."

*The real estate licensee must be accountable for any consumer money. It can be in the form of earnest money or promissory notes, for example. There are times the agent has in their possession an earnest money check and forgets to deposit it in a trust account, does not get receipt for deposit, or does not return it to the buyer if the transaction is not signed all around. This is clearly a violation.*

6. "To provide a pamphlet on the Law of Agency in the form prescribed in section 13 of this act to all parties to whom the licensee renders real estate brokerage services before the party;

1. Signs an agency agreement with the licensee
2. Signs an offer handled by the licensee
3. Consents to dual agency; or
4. Waives any rights.

*Every real estate purchaser, seller, landlord, and tenant should receive a copy of that pamphlet when working with a real estate broker. The party could receive many pamphlets if they are working with more than one broker.*

7. "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 or neither party. The disclosure shall be set forth in a separate paragraph entitled 'Agency Disclosure' in the agreement between the buyer and seller in a separate writing entitled 'Agency Disclosure.'"

*This disclosure is on the listing agreement. It is a best practice for real estate brokers working with prospective buyers to provide them with a buyer agency agreement, the pamphlet on the law, and explain agency.*

The following duty owed by a broker generally can be agreed to otherwise.

"Unless otherwise agreed, a broker owes no duty to conduct an independent investigation 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."

*This section deals with whether the broker is liable for the condition of the property or either party. But, if the broker knows of a defect that would affect the transaction, then the broker is responsible for disclosure of any material facts known by the broker.*

It is important to remember that ignorance as an agent will never "save" you in a court.

## Confidential Information

One of the duties of a broker is to never disclose confidential information unless under a subpoena or court order. This duty continues even after the termination of the agency relationship.

The law of agency defines confidential information as:

1. Was acquired by the broker during the course of an agency relationship with the principal;
2. The principal reasonably expects be kept confidential;
3. The principal has not disclosed or authorized be disclosed to third parties;
4. Would, if disclosed, operate to the detriment of the principal; and
5. The principal personally would not be obligated to disclose to the other party.

How do you, as a broker, know what the principal "reasonably expects" to be kept confidential?

*The best way to deal with confidential information is to discuss the definition with the principal right at the commencement of the agency relationship. ASK the principal what they want kept confidential. If at that time the principal asks that you keep confidential information that may be considered a material fact, that the other party may feel is a material fact, or that could cause a problem in a transaction then you need to reevaluate your agency relationship.*

*For example, if the seller wants to keep confidential a previous fire in the property, that is not something that would be considered confidential information because it is a material fact. But, if the seller wants to keep her celebrity status confidential, it would not affect the transaction and could be deemed confidential.*

If information is a matter of public record and is not a material fact affecting the transaction, can it be confidential?

*Information may be confidential even though it is a matter of public record. An example would be a lawsuit the seller was a party to that didn't affect the property. Or, it could be a criminal conviction of the seller or family member that doesn't affect the property.*

What are examples of confidential information for the seller?

*Information that could be considered confidential could include the motivation for selling or their financial situation. In addition, it could also include marital status, death in family, or celebrity status.*

What are examples of confidential information for the buyer?

*Information about the negotiation strategy or their financial resources beyond their ability to qualify could be considered confidential. The buyer may be able to qualify for a higher loan, be a celebrity or plan to remodel.*

A broker can unintentionally or unintentionally expose confidential information about the clients by leaving information opening on a desk, writing about it on social media, or discussing the information at an office meeting or at lunch.

## Duties of a Seller's and Buyer's Agent

Unless additional duties are agreed to in writing, the duties of a broker 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 competing properties for sale without breaching any duty to the seller.

### 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 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 buyer's agent (unless you meet one of the exceptions.) As a buyer's 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 seller's 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. For example, your listing might be a condo and the condo owner next door wants to list the exact same condo floor plan for a lower listing price.*

## Duties of a Dual Agent

There are situations when an agent represents both parties at the same time. Usually the most difficult aspects of balancing the agent's duties include keeping information confidential and dealing with the varying interests of each party.

*"A licensee may act as a dual agent only with written consent of both parties to the transaction after the dual agent has complied with section 3(1)(f), which consent must include a statement of the terms of compensation."*

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 is unlawful.*

## Duties of a Non-Agent

There are situations when a real estate broker will not represent either party. In that case, the licensee still has duties to both parties under the section of General Duties and Confidential Information.

*An example of a non agent situation would be if the broker was working with an attorney who makes that request.*

## Who Do You Represent as an Agent?

In the past, MLS rules included the offer of subagency. As a member of the MLS the licensee was a subagent of the sellers. In the late 1980's, it became evident that sellers and buyers were not clear as to who was representing them. Like many states in the country at the time, Washington State required agents to disclose to whom they were representing to both parties. That law has since been replaced by the Law of Agency which more clearly defines the duties of agency and disclosure.

Unlike agency relationships in the past, the Law of Agency creates the **presumption** that you represent the buyer. So, when you start working with a buyer and they accept your services, you have a presumed agency relationship with them. Remember, "buyer" according to the law, also means, "tenant."

*"A licensee who performs real estate brokerage services for a buyer shall be deemed a buyer's agent.."*

## Exceptions to the presumptions

There are 5 exceptions when you are not going to represent the buyer or the buyer exclusively.

A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:

1. The broker has entered into a written agency agreement with the seller, in which case the license is a seller's agent.  
*For example, the broker lists a property with a seller. The broker represents the seller.*
2. The broker has entered into a subagency agreement with the seller's agent, in which case the licensee is a seller's agent.  
*For example, the broker is working with another agent to list a property and also represents the seller.*
3. 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. (in 2015 this was amended to add the highlighted language.)  
*For example, the listing agent represents the seller and the buyer.*
4. The licensee is the seller or one of the sellers.  
*A real estate broker selling one of their own properties or leasing a rental that they own.*
5. The parties otherwise in writing after the licensee has complied with section 3(1) (f) of the act."  
*Section 3(1) (f) is the requirement to provide a pamphlet on the Law of real estate agency.*  
*For example, if the buyer and the seller agree in writing that the broker will represent both parties.*

The exceptions to the presumption of buyer agency do not have to be disclosed immediately. But, to avoid any possible misunderstanding by a consumer and avoid any chance of undisclosed agency it is imperative that the real estate licensee know at all times whom they represent and put it in writing!

Again, this is very important... A broker should know and disclosure who they represent at all times!

## Agency Confusion

Confusion could exist with the presumption of buyer agency. There are times that the actions of the broker and the situations might make agency issues not as clear.

*The broker is sitting in an open house and discusses home buying and qualifying with a prospective buyer that walks in the door. The broker might be the listing agent, an agent in the listing agent's team or just an agent looking for buyers who is holding it open.*

*The broker shows the buyer that property, as well as, the property for sale next door. Who does the agent represent? When should the broker discuss agency? When should the broker give the prospect a copy of The Law of Agency Pamphlet?*

*The agent may be the listing agent of the first house. The buyer would not necessarily know when talking to the agent. The agent may be a sub agent of the listing agent and his or her name may not appear on the sign.*

*So, therefore the agent could be getting into a dual agency situation with a buyer without disclosure in writing or with terms of compensation.*

*The agent could choose to only represent the seller who owns the listing and not the buyer. In that case, the buyer would not be represented and would need to waive his rights to agency according to the Law of Agency and have a no agency situation or transactional relationship.*

## Buyer Agreements

The Law of Agency creates a presumption of buyer agency. A written agreement is not required by the law to represent the buyer. Lack of disclosure is the primary cause for misunderstanding representation. There are a number of reasons why a written agreement with the buyer can clear up any confusion.

A written agreement with a buyer:

- Discloses the agency relationship with the buyer in writing.
- Affirms that the agent has given the buyer a copy of the Pamphlet on the Law of Agency.
- Gives the buyer written consent for dual agency.
- Details terms of compensation.
- Can protect agent commission if buyer purchases with another agent.
- Puts commission in writing if there is no listing agreement.

Prior to a buyer signing a purchase and sale agreement, signing any contract including lease agreement, consenting to a dual agency or waiving any rights, the buyer must receive a copy of the pamphlet of the Law of Agency. This serves as disclosure. The buyer agreement serves as documentation that the buyer received the pamphlet.

## In- House Transactions

When an agent sells or leases a property that is listed with the same firm, the agency relationship becomes more complicated.

*“In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is the dual agent, and must obtain the written consent of both parties as required under section 6 of this act. In such case, each licensee shall solely represent the party with whom the licensee has an agency relationship...”* According to the Law of Agency.

The broker becomes a dual agent, in these cases. When taking a listing, the licensee is the agent of the seller. Sellers think they are listing with the “office” or the “company.” It is important to be more conscious of keeping confidential information away from the other agents in the office. In addition, it is important for licensees to explain to the seller, that they need to do the same and be careful of giving away information on their listing to brokers in the same company.

The same goes for the times the agent is representing the buyer. The buyer needs to be made aware that the other agents that answer the phone at the office do NOT represent them.

According to the Law of Agency

*“In a transaction involving two different brokers licensed to the same real estate firm, the firm's designated broker and any managing broker responsible for the supervision of both brokers, are dual agents and each broker solely represents his or her client—unless the parties agree in writing that both brokers are dual agents.”*

Who does the Designated Broker of the office represent?

*If there is dual agency. When the real estate office has a listing, the agreement has a clause authorizing dual agency. If another agent under the Designated Broker's supervision has an offer on the property for his or her clients and a written agency agreement, then the Designated Broker becomes a dual agent. The listing agent represents the seller. The selling agent represents the buyer.*

## Transaction specific agency relationships

There may be situations where a broker will work with a seller and/ or buyer in more than one transaction. The Law of Agency is “transaction specific.”

*“A broker may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that same party in a different transaction involving that party, if the licensee complies with this act in establishing the relationships for each transaction.”* According to the Law of Agency.

*This situation could happen if a broker represents a buyer on the sale of a house. The sellers may decide that they want the same broker to represent them in the purchase of their next home instead of working with the agent that has their home listed. The broker would represent the buyer in the sale of the seller's home and the seller in the sale of the new home.*

# Terminating an Agency Relationship

There are 4 ways to end an agency relationship according to the Law of Agency.

## 1. Completion of Performance

Typically, an agent has completed performance at the time the transaction closes and the agent earns commission. At that time the licensee is no longer an “agent” for the principal.

*There are times that after a transaction closes that the real estate broker might believe that the agency relationship continues. The buyer might want the agent to negotiate with the seller, who has moved away, regarding something that the buyer found in the house that needs fixing, for example. Or the buyer may want to give the broker money to pay off a lien that wasn't recorded. There is no agency relationship after closing and the broker should not have any consumer funds.*

## 2. Expiration of the Term

An agency agreement typically has a term for the agency relationship. A listing agreement has a term for the listing. A buyer's agent may use a buyer's agency agreement that also has a term. The term may be extended when the agreement is extended.

## 3. Termination by Mutual Agreement

There are times that the principal and the real estate agent mutually agree to terminate. For example, if a home that is listed does not sell, the seller and the agent may agree to stop working together. The seller may decide to list with another agent or take their home off the market completely.

Or, a buyer and an agent after looking for properties for weeks may choose not to continue working together.

## 4. Notice from one party to another

There are times that the principal OR the agent do not want to continue the relationship.

When working under a listing agreement, there is a term agreed upon. If one of the parties chooses to terminate the agency relationship and the agreement, there may be contractual issues that may have to be resolved. For example, the seller may be liable for damages or costs incurred by the listing broker should the seller choose to unilaterally revoke the agreement.

When working with a buyer that seems to be difficult to work with or seems to be a “deadbeat” buyer, often the real estate agent simply does not call him back. They “dump” the buyer and do not give notice that the agency relationship has terminated. It is important to remember that according to the Law of Agency, that if the agent chooses to terminate the relationship, that must be done by giving notice.

## Operation of Law

An agency relationship can terminate as a result of death or incapacity of either party, bankruptcy of either party, the suspension or revocation of the broker license, or destruction of the property.

## Duties that survive agency

Except as otherwise agreed to in writing, a licensee owes no further duty to the parties other than the duties of:

1. Accounting for all moneys and property received during the relationship; and
2. Not to disclose confidential information.

## Chapter 2

# Broker Supervision and Liabilities

### Section Objectives

- Structure of a firm

- Employee vs Independent contractor

  - Know laws regarding independent contractor status

  - Explain the requirement for Workers Comp Insurance

- Broker Supervision

  - Know the legal responsibilities of a Designated Broker, managing Broker, Broker and Branch Manager

- Responsibilities within the Firm

  - Understand the authority of a Designated broker to delegate duties

  - Know the guidelines for Assistants

  - Know the importance of a Policy Manual and the required elements under the law

  - Know the Importance of display of licenses and the transfer to another firm

### Structure of a Real Estate Brokerage

The traditional real estate firm before the turn of the century was typically structured with a designated broker/owner with a number of brokers as independent contractors working out of the office. They were paid often a commission split between the firm and the broker. There was typically a maximum that when reached, the broker kept the total amount of commission until the end of the year or renewal period.

Today, there is a variety of different structures of a real estate firm. Where most brokers were previously independent contractor there are some firms that have real estate agents working as independent contractors, direct employees, members of teams, and out of home offices.

### Employees vs Independent Contractors

Most real estate firms have at least one employee. They must fall under the Federal, state and local laws and rules for hiring and maintaining an employee. There are some real estate offices that choose to hire affiliated licensees as employees with all the benefits that that cover employees.

There are some firms where teams that may employ assistants as employees.

Most real estate brokers work as independent contractors under the firm

The designated broker cannot treat them as employees, but gives them the freedom to work independently and report income on IRS taxes as a contractor. . They cannot be required to attend meetings or have regular hours. They also do not receive the benefits of an employee.

The real estate industry's regulatory structure presents a unique framework within which to operate when it comes to worker classification. The main characteristic of an independent contractor relationship is one where the worker is generally free of control. However, Washington state statutes under License Law RCW 18.85 and RCW 18.86 specifically require managing and designated brokers to exercise supervision over their agents. Since the requirement of a broker to exercise supervision over agents is in direct conflict with one of the basic tenants of an independent contractor relationship, it is difficult for a broker to both comply with labor laws in order to establish an independent contractor relationship, while also fulfilling their supervisory duties under state real estate laws. But, both Federal and state

legislatures have recognized the unique aspects presented by the real estate industry by addressing the independent contractor issue. As seen below, the Federal and Washington State laws are noted.

The United States Internal Revenue Service (“IRS”) considers real estate agents to be “statutory nonemployees” if three factors are met.

- First, the real estate agent must be licensed.
- Second, substantially all payments for the licensed real estate agent’s services must be directly related to their sales or other output rather than based on number of hours worked, and
- Thirdly, the real estate agent’s services must be performed pursuant to an agreement that states the real estate agent will not be treated as an employee for federal tax purposes.

While satisfaction of the aforementioned IRS test relates only to the federal tax treatment of real estate agents, it demonstrates the federal government’s recognition of the unique nature of the real estate industry and, as such, the need to treat it differently than other industries.

The National Association of REALTORS studied the classification of real estate agents as independent brokers in 2015. The White Paper was updated in 2016. Available at [www.realtor.org](http://www.realtor.org).

## **Workers Comp Insurance**

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.

A study was done released in November 2016 about the workers comp claims made primarily by age and occupation. Over 55,000 people are listed as in real estate or rental. Over 7.7% of the people in that category are 65 years or older. Over 30,000 in real estate are between 25 years old and 55 years old with the number almost equally divided per decade of about 10,000 people.

The leading cause of hospitalization within 1 day of a work related injury is falling on same level.

Here is a chart of the tax code as it defines those that are independent contractors.

Federal IRS	Tax Code	United States Code Annotated Title 26. Internal Revenue Code Subtitle C. Employment Taxes Chapter 25. General Provisions Relating to Employment Taxes § 3508. Treatment of real estate agents and direct sellers	(a) General rule.--For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller-- (1) the individual performing such services shall not be treated as an employee, and (2) the person for whom such services are performed shall not be treated as an employer. (b) Definitions.--For purposes of this section-- (1) Qualified real estate agent.--The term "qualified real estate agent" means any individual who is a sales person if-- (A) such individual is a licensed real estate agent, (B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and (C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.
Washington State	Labor- Other/ General Minimum wage	RCW 49.46.130 Minimum rate of compensation for employment in excess of forty hour work week — Exceptions.	(2) This section does not apply to: ... (j) Any individual licensed under chapter 18.85 RCW unless the individual is providing real estate brokerage services under a written contract with a real estate firm which provides that the individual is an employee. For purposes of this subsection (2)(j), "real estate brokerage services" and "real estate firm" mean the same as defined in RCW 18.85.011.
Washington State	Labor – Other/General: Unemployment Compensation	RCW 50.04.230 Title 50. Unemployment Compensation Chapter 50.04. Definitions 50.04.230. Employment-- Services of insurance agent, broker, or solicitor, real estate broker or real estate salesperson, and investment company agent or solicitor	The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesperson to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940."

# Broker Supervision

In Washington State, there are two real estate licenses that a person can hold. The Broker's license or the Managing Brokers License. What we used to refer to as "salesperson" is now a "Broker." The person that holds a higher license that can manage others or a firm is called a Managing Broker in Washington. The terms used to describe agents varies per state. In some states, a salesperson works under a broker.

A Designated Broker of a firm holds a Managing Broker's license. If there are other brokers working at the firm, they are referred to as affiliate Brokers or affiliate Managing Brokers.

All real estate activities that are performed by a licensee must be carried out under the firm. The Designated Broker is responsible for all the real estate activities. All payments of commissions are paid to the Firm who then distributes to the affiliated Brokers.

A Broker or Managing Broker cannot sell or lease property for another, for example, unless the entire transaction is conducted through the firm. There are exceptions to this rule if the Broker is selling or leasing their own property. All brokers conducting any real estate activity on their own property must disclose that they do have a license and advertising and contracts. Since the designated broker is potentially responsible/liable for all brokerage activity of the licensees affiliated with the brokerage, licensees leasing or selling activity, even their own property, must have the designated broker's consent. The Firm may have other policies for a broker selling or leasing their own property. The Errors and Omissions Insurance Policy may dictate the Designated Broker's responsibility in those situations.

## Designated Broker

The Designated Broker of a firm is responsible for all the activities, conduct and transactions under the firm. The old cliché, "the buck stops here" applies to the Designated Broker. Even if the Designated Broker delegates duties to a managing broker within the firm, the Designated Broker is ultimately liable. The Designated broker must be a real person.

A Designated Broker must hold a "Managing Broker's" license. A "Designated Broker" means a natural person who owns a sole proprietorship real estate firm or who has a controlling interest in the firm who is designated by a legally recognized business entity (such as a corporation, LLC, or partnership real estate firm) to act as a "Designated Broker" on behalf of the firm. The Managing Broker's license must have an endorsement from the Department of Licensing as "Designated Broker."

The firm appoints a Managing Broker as the "Designated Broker" who has authority to act for the firm. The Designated Broker for a firm must be registered to that firm and have an endorsement on their "Managing Broker's" license indicating the names of all firms for which they serve as the "Designated Broker." A "Designated Broker" may act as a "Designated Broker for more than one firm.

## Designated Broker Responsibilities RCW 18.85.275 WAC 308.124C-125

The Designated Broker is responsible to supervise the conduct of brokers and managing brokers for compliance with License Law and the Law of Agency. In addition, the Designated Broker is to:

- Assure that brokerage service contracts or activities in which he/she participated follow the rules and laws of DOL.
- Keep all brokerage service contracts and transaction records as they are the property of the firm.
- Cooperate with the DOL in an investigation, audit or licensing matter
- Ensure accessibility of the firm's offices and records to the DOL.
- Ensure safe handling and proper delivery of client funds and property
- Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance.
- Ensure policies or procedures are in place to account for safe handling of customer or client funds or property.
- Maintain up to date written assignments of delegation of Managing Brokers or Branch Manager Duties:

- Delegating responsibility must be only to Managing Brokers licensed to the firm. Address in writing the duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and Managing Brokers.
- Must also address the heightened supervision of brokers that are licensed for less than 2 years and the hiring, transferring, and releasing licensees to or from the firm.
- Maintain and implement written policies on:
  - Referral of home inspectors in compliance so that there is a procedure for referring home inspectors to buyers or sellers addressing the consumers right to freely pick one and prevent any collusion between the inspector and the agent.
- Regarding the levels of supervision of all Brokers and Managing Brokers of the firm:
- Review with initials of all purchase or lease documents for agents licensed less than 2 years within 5 days of mutual acceptance.
  - Ensure all persons in the firm are appropriately licensed
  - Ensure all licensees affiliated with the firm submit transaction documents to the Designated Broker or Delegated Managing Broker or Branch Manager in a timely fashion.
  - Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and related rules

*Most importantly, the Designated Broker is to be responsible for ultimate oversight of the firm. The old cliché, “buck stops here,” is appropriate here. All the activities, records, transactions, broker conduct, and collection and disbursement of monies for a transaction fall under the responsibility of the Designated Broker.*

## Managing Broker

A “Managing Broker” means a natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of the “Designated Broker” and who may supervise other brokers or managing brokers licensed to the firm.

But, a Managing Broker is not required and may never be delegated to supervise another broker’s activity or be delegated additional duties and responsibilities by the Designated Broker.

### Managing Broker Responsibilities RCW 18.85.235 RCEW 18.86.030 WAC 308.124C-135

The Managing Broker is responsible to:

- Assure all real estate brokerage services he/she participated in are in accordance with the license laws and rules.
- Cooperate with the DOL in an investigation, audit or licensing matter
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Keep the DOL informed of his or her address
- If **delegated** by the Designated the Managing Broker in writing at the firm signed by both parties is to:
  - ◆ Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance and policies or procedures are in place to account for safe handling of customer or client funds or property.
  - ◆ Keep accurate records, , review of contracts, modify or terminate brokerage service contracts for the firm,
  - ◆ Ensure proper and legal advertising by brokers working under the Managing Broker.
  - ◆ Modify and terminate brokerage service contracts on behalf of the firm.
  - ◆ Ensure all persons representing the firm that the Managing Broker has delegated authority to supervise are appropriately licensed,
  - ◆ Ensure licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
  - ◆ Follow and implement the Designated Brokers written policy on Referral of home inspectors.
  - ◆ Address levels of supervision of all licensees which includes review of new brokers under 2 years of licensure.

*In some cases, a Designated Broker will delegate responsibilities to a Managing Broker. Any delegation of responsibilities must be in writing signed by both the Managing broker and the Designated Broker. This does not relieve the Designated Broker for these responsibilities, but adds another level of responsibility. But, they must be in writing to be reviewed by the auditor.*

### **Examples of Department of Licensing Disciplinary Action**

Finding: Failed to adequately supervise a salesperson under his employment regarding notifying us of their indictment and conviction.

Action: Broker's license suspended for 1 year (stayed for 3 years), and fined \$2,500.

Finding: Failed to supervise the activities of a salesperson.

Action: Broker's license suspended for 1 year (stayed for 3 years).

## **Real Estate Broker**

A "Broker" is licensed to one firm and must be supervised by a "Designated Broker" or "Managing Broker." This is the name that is used for all licensees who are new or do not have a Managing Brokers license.

Once licensed a broker must have a heightened level of supervision. A Designated Broker or a Managing Broker who was delegated the responsibility in writing must oversee the new agent for the first two years. This includes reviewing all contracts within 5 days of acceptance.

### **Broker Responsibilities RCW 18.85.285 WAC 308.124C-140**

Brokers are responsible to:

- Assure all real estate brokerage services he/she participated in are in accordance with the license laws and rules.
- Submit all transaction documents to the Designated Broker, Branch Manager or a Managing Broker who has been delegated this responsibility **within 2 days of mutual acceptance.**
- Cooperate with the DOL in an investigation, audit or licensing matter
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Keep the DOL informed of his or her address
- Follow the written policy of home inspectors. Your Designated Broker should have a written policy.
- Be appropriately licensed including keeping your license current with required education and background/fingerprint check.
- Follow laws and rules regarding:
  - ◆ Safe handling of customer/client funds or property
  - ◆ Timely delivery of transactions documents and client funds/property
  - ◆ Proper and legal advertising
  - ◆ Modifying or terminating brokerage service contracts on behalf of the firm

### **New Brokers**

When a person has been licensed less than 2 years they must be subject to a heightened degree of supervision by the Designated broker or a Managing Broker who this has been delated to.

The new broker must work with the Designated Broker or Managing Broker, if delegated:

- Participate in all brokerage contract reviews
- Submit proof of the required 90 hours of clock hours in the first two years
- Secure advice or assistance when offering services beyond their expertise.
- Timely submit brokerage service contracts and funds according to the firm policy.

## Branch Manager

A "Designated Broker" may establish one or more branch offices under the same name as the real estate firm.

Each Branch office:

- Will be licensed.
- Pay a fee.
- Have a duplicate license showing the location of the real estate firm and the particular branch.
- Prominently display each duplicate license in the office.
- Have a Designated Broker authorize a Branch Manager to perform the duties.
- Have a Branch Manager" who has a Managing Brokers license.

A branch office license shall not be required where real estate sales activity is conducted on and limited to a particular subdivision or tract within 35 miles of the licensed office or branch office.

### Branch Manager Responsibilities WAC 308.124C-130

The Branch Manager if delegated in writing and signed by the Managing Broker and the Designated Broker is responsible for:

- All Brokerage service contracts or activities in which he/she participated
- Cooperate with the DOL in an investigation, audit or licensing matter and insure records are available on demand.
- Ensure accessibility of the firm's offices and records to the DOL
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Follow the written policy of the Designated Broker on referral of home inspectors.
- Ensure all persons at the branch location are appropriately licensed
- Oversee the branch licensees, employees and contractors.
- Ensure all licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
- Hiring, transferring, and releasing licensees to or from the branch
- All activity with the branch including supervision of all broker and Managing Brokers and heightened supervision of Brokers licensed less than 2 years.

If delegated by the Designated Broker, the Branch manager is to:

- Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance and policies or procedures are in place to account for safe handling of customer or client funds or property.
- Keep accurate records, proper and legal advertising, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, following and implementing the Designated Brokers written policy on Referral of home inspectors and addressing levels of supervision of all licensees including review of new brokers less than 2 years of licensure.

# Responsibilities within a Real Estate Firm

## Delegating Responsibilities

The Designated Broker may delegate in writing certain responsibilities to Managing Brokers. The Designated Broker must maintain an up-to-date log of any responsibilities or assignments delegated to Managing Brokers or Branch Managers. It must be signed by all parties.

The Designated Broker can delegate duties to a Branch Manager to manage an office according to the real estate laws and to cooperating with any DOL investigation. Other responsibilities that can be delegated include oversight of the branch licensees including hiring and appropriate licensing, ensuring all subordinates are submitting documents in a timely manner, handling of client funds and property, record maintenance, advertising, reviewing documents, modifying or terminating brokerage service contracts, and following Designated Brokers policies for referring home inspectors.

The Designated broker can delegate responsibilities to a Managing Broker which includes a Branch Manager that can include trust account keeping, handling client funds/property, keeping required records, advertising legally, reviewing of contracts, accessibility of the office, availability of records, and making sure the office policy on referral of home inspectors is followed.

*A designated broker, for example, can delegate in writing certain responsibilities for a managing broker to oversee a team of agents. These responsibilities can include reviewing of contracts, handling and depositing earnest money and advertising oversight. The designated broker still remains ultimately liable.*

The Designated Broker can also delegate in writing to a managing broker the responsibility to supervise all licensees that have been in the business less than 2 years. By delegating responsibilities, the Designated Broker remains responsible for the conduct of the subordinates.

## Reviewing Contracts

It is the Designated Broker's responsibility to supervise the brokers and the contracts within the firm. Brokers and Managing Brokers are required to turn into the firm any documents and contracts within 2 days of mutual acceptance. The firm must have a policy and procedure for reviewing all transactional documents and contracts. The review must include whether the contract is complete, valid, have signatures and have receipts for deposits of any trust funds. Often, staff will review the files to make sure they are complete and a transaction folder is started.

In this digital world, most real estate offices utilize software to track all the transactions. They are secure, often automated, include the other parties to the transaction and are accessible at any time.

## Real Estate Assistants

The Department of Licensing created guidelines for agents that hire licensed and unlicensed assistants to help them manage their business. These are just guidelines but it is important to be aware if your assistant is actually performing duties that may require a real estate license.

### Unlicensed Assistants MAY:

- Provide information about the characteristics of a listing or the terms of a transaction, as written and approved by a broker. For example, They can answer questions from consumers about listings published in the MLS.
- 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. This must be done within the laws regarding fair housing and DOL advertising laws.
- Gather market analysis information.
- Perform normal clerical duties such as entering information into forms, 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** perform any act with the intent to circumvent, or which results in the circumvention of, real estate licensing laws including, but not limited to:

- Show properties, answer questions, or interpret information about the property, price, or condition.
- Interpret information about listings, title, financing, contracts, closing, or other information relating to a transaction.
- Fill in legal forms or negotiate price or terms.
- Hold or disburse trust funds.

*An unlicensed assistant cannot do your job as a Broker. Unlicensed assistants CANNOT hold open houses, use your lock box entry, discuss negotiations on a purchase agreement with one of the parties, discuss liens or other information on a title report, discuss qualifying a client with a lender, or meet with clients for signatures.*

## Time is of the Essence

All real estate licensees shall perform all acts required of the licensee by a real estate agreement as expeditiously as possible. Intentional or negligent delays in such performance shall be considered detrimental to the public interest in violation of RCW 18.85.361(23)

*Listing Agent Lisa has an offer to purchase from her buyer that saw the property this afternoon. She receives a call from a cooperating broker that another offer is going to arrive by email within the hour. She does not tell the seller of the second offer sitting in her email and encourages the seller to sign the offer with her buyers. She had a duty to present all offers to the seller. She caused an intentional delay in presenting the second offer.*

## Policy and Procedures Manual

The plan for management of your real estate firm is contained in the policy and procedures manual. It can also be referred to as the instruction manual for building and maintaining your business. It is a management tool that needs to be revisited on a regular basis. The manual is used for everything from recruiting, day to day office procedures, records management, marketing, human resources. Addressing these issues creates a stronger relationship and creates expectations from all involved in the firm.

The policy and procedures manual needs to be accessible within the real estate firm and available to all the staff and brokers. It should be updated to reflect changes within the office and from outside including the Department of Licensing, MLS, Association membership and city and community. It is good practice to have a new recruit sign off that they have read and understand the Policy and Procedures Manual and keep a copy of that in their file.

### **Mission statement**

What is the company about and what is it looking to be. How does it see the staff and brokers contributing?

### **Employment or Work Contract**

This section will include the employment agreement. Traditionally staff are employees of the firm. The real estate brokers and managing brokers are typically under an independent contractor agreement.

- Independent Contractor agreement or employee contract
- Membership in MLS and Realtor organization (if applicable)
- Personal assistants and teams
- Ownership of listings, contracts signed, etc.
- Selling or leasing personally owned property.

## Compensation to Broker

- How and when is compensation paid.
- How is compensation paid to teams and assistants
- How the desk fee or split is handled or not paid
- Paying co-brokers and referrals
- Withholding from pay
- Tax reporting to IRS
- Fees including MLS, workers comp, E&O insurance etc
- Commission disputes

## New brokers and staff

- Orientation
- Referrals (if applicable)

Termination for cause, death, disability, firm transfer

## Office Policies

- Management identification including designated broker and Branch Manager (if applicable)
- Delegation of duties
- Management of office including open times, equipment, office supplies, handling of keys
- Support staff responsibilities
- Accounting
- Handling of calls and referrals
- Sales meetings
- Use of office
- Non smoking policy
- Vacations and delegating business responsibilities

## Leads, Lead Generation and Referral

- Advertising
- Corporate referrals and internet leads
- Floor and sign calls
- Walk in leads

## Transactions

- Paperless office and retaining records
- MLS rules and regulations and fines
- Listings including lock boxes, filing deadlines,
- Purchase and Sale agreements including co broker information, EM deposits
- Property Management including documents and trust funds
- Retaining records

## Third party referrals

- Home Inspector referral policy required under WAC 308-124C (See below)
- Referring contractors, escrow, title, etc

## Advertising and Social media

- Dept of Licensing requirements for disclosure of firm name
- Corporate logo use
- Assumed names policy

## Trust funds and accounts

- Depositing within time limits
- Receipts for client funds
- Process for deposits

## Federal and State laws

- Workers Comp payments and benefits
- Agency disclosure and pamphlet
- Confidentiality
- Unlicensed activity
- Anti Trust Compliance

Fair housing and anti discrimination in conduct and advertising

Sexual harrassment

Fraudulent conduct

**Complaints and lawsuits**

Errors and Omissions insurance

**Safety and Disaster Recovery**

Broker and staff safety

Records recovery

**Required Firm Policies**

The Washington State Dept of Licensing requires that the following be addressed in a firm written Policy Manual. A designated broker is responsible for maintaining, implementing, and following written policy that addresses:

(a) Procedures for referring a home inspector to buyers or sellers. The policy will address the consumer's right to freely pick a home inspector of the buyer's or seller's choice and prevent any collusion between the home inspector and a real estate licensee. If a licensee refers a home inspector to a buyer or seller with whom they have or have had a relationship including, but not limited to, a business or familial relationship, then full disclosure of the relationship must be provided in writing prior to the buyer or seller using the services of the home inspector.

(b) Levels of supervision of all brokers, managing brokers and branch managers of the firm.

(c) Review of all brokerage service contracts involving any broker of the firm licensed for less than two years. Review must be completed by the designated broker or their delegated managing broker within five business days of mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.

**Real Estate Licenses for Affiliated Brokers**

The Designated broker is responsible for display of the licenses for the affiliated brokers. Because offices have become so large since the turn of the century, often these licenses are in binders in alphabetical order. They must be available to the Department of Licensing and to the public.

The Department of Licensing is moving to an online system for license renewals and transfers. It is called the SOLAR system. It is phasing into operation in 2017. Real estate brokers will be required to have an email address. They will be able to log into their license account. When they want to change from one firm to another, this will be done online.

A broker can just choose to leave a real estate firm at any time for any reason. In turn, a Designated Broker can choose to terminate the relationship with any affiliate Broker or Managing Broker. If the person is being terminated due to some illegal activity, the Managing Broker is responsible to report that information to the DOL. If a broker or managing broker chooses to leave a firm, this can be done immediately. A firm cannot hold a person's real estate license "hostage" until some payment is made or other kind of requirement.

The firm the transferring broker or managing broker chooses to associate with must "accept" them online before their license is officially moved.

When a firm is terminated, the Designated Broker must

Provide DOL with closing firm affidavit documentation.

Ensure all brokerage services contracts are transferred or terminated with parties written authorization.

Notify all parties to pending transactions that the firm is closing.

Of course, any affiliated licensee can no longer write a transaction under the firm name. Licensees must transfer to another firm.

When It is time to renew a license, brokers log into the system and with a checkmark verify under "penalty of perjury" that they have completed the required continuing education classes. They do not list classes or send certificates of completion to the DOL unless they are audited. In the next year or so, all renewals will take place online.

# Chapter 3

# Property Management

## Section Objectives

- Understand the requirements for Property Management Agreements
- Be able to create reports for Property Management Funds
- Know what is required in marketing and screening tenants
- Explain the importance, termination, and concessions in Lease Agreements
- Know the difference between actual and constructive eviction

Property Management is an area of real estate that can include managing one single apartment unit to managing hundreds of units. Properties can include apartment buildings, residential homes, commercial retail space, warehouses, and office buildings.

Property managers are bound by real estate license and agency laws. A person managing property for another must have a real estate license in Washington State. Property management activities must be conducted under a real estate firm. Property Management agreements are most often between a firm and an owner.

If a broker owns properties and conducts his/her own property management activities, then a license is not required. The broker does not have to run the property management through the firm, but the broker must disclose to the consumers that they hold a broker's license.

## Property Management Agreements

All properties managed by a firm must be supported by a written property management agreement in Washington State. The agreement is between the firm and the owner. The Designated Broker can hire a broker or managing broker to manage the property. But, the agreement is between the firm and the owner. It must be signed by the designated broker and the owner.

The property management agreement should include the following at a minimum according to Washington State laws:

- Identification of the parties
- Identification of the property or properties which could include a legal description.
- The type of properties, number of units and square footage (if other than residential)
- The firm's compensation.
- Whether or not the firm is authorized to collect funds and disburse funds and for what purposes.
- Authorization, if any, to hold security deposits and the manner in which security deposits may be disbursed
- The frequency of furnishing summary statements to the owner.
- Signed by all parties.

The agreement should also include:

- The duties and responsibilities of the manager
- The responsibilities of the owner
- Starting date, termination date and renewal options
- Copy of leases that will be used

Any change or modification to the property management agreement must be made in written form and signed by the owner and the designated broker. The property management agreement must be kept with the firm records.

The real estate firm may provide other services to owners of properties managed provided full disclosure to the owner is provided in writing of the broker's relationship with any, and all persons providing such services, prior disclosure of fees charged, and permission is granted by the owners.

*If a broker managing a property for an owner need to have some repairs made to the deck, for example, the broker cannot have a relative do the work unless there is full disclosure and permission from the owner.*

## Property Management Funds

Each owner of a property managed by the firm must be provided a summary statement as provided in the property management agreement for each property. The statement must be provided on a regular bases as decided upon in the property management agreement. The designated broker is to retain a true copy of the statements.

### The summary statement must include:

- The balance forward from the previous summary statement
- The total rent receipts
- The owner contributions
- Other itemized receipts
- Itemization of all expenses paid
- The Ending Balance
- Number of units rented. (In the case of commercial, this might include square footage)

### Operating Budget

An operating budget is based on the anticipated revenues and expenses. When the property manager develops the budget, it must reflect the owner's long term goals. The budget will allocate money for continuous, fixed expenses such as employee's salaries, property taxes and insurance. It will also establish a cash reserve fund for variable expenses, such as repairs and supplies.

### Monthly Income Report

Property managers need to create a report of the cash flow for the owners.

- Potential gross rental income
- + addition income (vending machine, parking fees, laundry machines)
- Vacancy rates and credit losses

#### Effective Gross Income

- Effective Gross income
- less operating expenses
- Net operating income before the Mortgage (debt service)**

- Net Operating income before mortgage (debt service)
- less debt service
- Cash flow (before tax cash flow)**

- Cash flow
- Taxes
- After tax cash flow.**

## Return on Investment

The return on investment (ROI) is one way to measure the profitability of a property. The ROI is the ratio of the property's after tax cash flow to the money invested in the property.

To compute ROI it is the After Tax Cash flow divided by the invested Equity by 100%.

$$\text{ROI} = \frac{\text{ATCG} \times 100}{\text{E}} \times 100\%$$

*If an owner invested \$100,000 in a property and it has a \$10,000 ATCF then the ROI would be 10%.*

*This would show the owner whether the income generated less expenses was resulting in a good return on the investment.*

## Profit and Loss Statement

A profit and loss statement looks at the income less the expenses for a period which could be quarterly, semiannual or annual to show the Net Profit for the property. Typically, only the mortgage interest paid is used in the computation. This can measure the profitability and if changes need to be made to either increase receipts or decrease operating expenses.

## Marketing and Screening Prospective Tenants

The property manager is responsible for leasing the property to prospective tenants. It is important to rely on a neighborhood market analysis. If there is a low vacancy rate, an ad campaign would promote the many amenities of the property. If there is a high vacancy rate in the area it might be necessary to adjust asking rent or offer concessions.

The property manager should have a screening process that gives all potential tenants the same opportunities to rent. Each tenant should be presented with a lease application and the criteria for applicants. For residential tenants, the property manager would have a background and credit check, call references, and have a rental history. In a commercial lease, the prospective tenant must have the authority to negotiate contracts for the company. The property manager would request the documentation from a corporation, partnership or LLC. A profit and loss statement and other financial records would be necessary to determine if the potential tenant is financially sound.

Federal state and local laws regarding anti-discrimination must be adhered to. Questions cannot be asked about a prospective tenant that would fall under a protected class category.

## Lease Agreements

A property manager does not have the authority to write property management agreements. They must use standard forms or those prepared by an attorney. The contract is a bilateral one because there is rent exchanged for exclusive use of the property. The provisions of the lease are essentially the same for any valid contract. There must be an offer and acceptance by parties with the legal capacity to contract.

The lease can include concessions such as free month rent to influence a prospect to become a tenant, rent reductions or rebates, length of the lease period, tenant alterations, expansion options, non-competing tenant restrictions and lease buy-out, assumption, and subletting.

### When is a Lease in Force and when is it Terminated?

**Abandonment** by the tenant. A tenant is still liable for the terms of the lease even if they abandon the property.

**Death of one of the parties** does not automatically terminate a lease.

**Destruction of the premises.** In a residential lease, most states will terminate the lease upon the destruction of the premises. Many commercial leases are binding upon the destruction of the premises. It will be written in the lease and would depend on the situation.

**Fulfillment of the terms.** A lease is terminated when the parties have fulfilled the terms of the lease.

**Merger.** If the tenant purchases the property that is being leased, then the lease is terminated.

**Mutual Agreement.** If both parties agree to terminate the lease.

**Operation of law.** Bankruptcy of either party or condemnation, for example would terminate a lease.

**Sale of the property.** This does not automatically terminate a lease. The new owner would need to honor the existing lease. On a commercial lease, it would be addressed in the lease.

## Eviction of Tenants

Rent is paid in advance usually on the first of the month. There is state requirements and laws regarding the eviction process.

Tenants are usually evicted because of

- Nonpayment of rent,
- Unlawful use of the premises, or
- Noncompliance with health and safety codes.

**Actual eviction** is when the landlord files a suit for possession because the tenant has breached the lease.

**Constructive eviction** is when the landlord breaches the lease and the tenant must leave the premises because it has become uninhabitable.

# Chapter 4

# Recruiting and Interviewing

## Section Objectives

New Agent Recruiting

Be able to develop a recruiting plan for potential brokers

Recruiting Experienced brokers

Develop a recruiting plan for experienced brokers

Interviewing Recruits

Identify prohibited interview questions

Broker and Firm records

Identify what should be in the employee records

## Starting or Growing a Real Estate Firm

In the last century, a real estate office often consisted of a brick and mortar building with desks for each of the real estate agents. The number of agents licensed depended on the size of the office. Office meetings were held weekly with most of the agents in attendance. This was the most effective communication tool between owner and agents. The copy machine was always in use. All of the research from plat maps to MLS information was only available in the real estate office. Phone numbers for the office were on every sign and all advertising. Offices were either boutique offices, medium size with 10-30 agents, or large offices. There were many franchises growing nationally and internationally. The real estate office was the center of all real estate business.

Today, real estate firms have evolved with the changing world of technology. The focus is between the real estate agent and the client or prospect. With laptop and mobile computing available along with digital signatures, real estate agents are able to create transactions from absolutely any location. Few agents sit at a desk daily and seldom do offices have filled office meetings weekly. Most real estate agents work out of their home and check in the real estate firm infrequently. Communication between client and real estate agent was a direct connection with cellular phones.

Offices are changing with much less square feet and few desks. The number of agents licensed with the firm is not dependent on the size of the office. There are virtual real estate firms with no open designated office space. Firms are also divided into small boutique offices, medium sized ones with less than 50 agents, large offices and mega firms that can have hundreds of real estate licenses. Agents are working more in teams from just two people to large teams all under the umbrella of a firm.

For an agent that wants to manage or own a real estate firm, it is important to evaluate all options.

## Building a Team within an Office

An agent can build a team within the walls of a real estate firm. The overhead is covered and if it is a franchise, the name is often recognizable. In Washington State, if a broker wishes to manage a team and take responsibilities then the Designated Broker must put any delegation of responsibilities in writing.

## Starting a Boutique Office

A real estate agent with a Managing Brokers license in Washington State can open a firm. There must be a Designated Broker who is often the owner. The owner can appoint a Designated Broker who must have some ownership or decision making controlling interest in the firm.

The advantage to running a very small brokerage is that the broker has the ability to work without the confines and rules of a larger brokerage. All decisions are made under the Designated Broker. The size and scope of the office is dependent on the business plan of the Designated Broker.

The broker can work directly out of a home or small workspace. With the advent of technology making transactions paperless, office machines are not required.

A broker would have to evaluate and balance the advantage of receiving the full commission on a transaction and paying all the costs to own a brokerage, with a commission sharing situation to cover overhead.

## Recruiting Agents

One of the most challenging aspects of running a real estate brokerage is recruiting prospective real estate brokers. In most cases, real estate brokers are paid on a commission basis they are looking for an umbrella of a real estate firm that will contribute to their efforts to be as successful as possible. Regardless of all the possible benefits a real estate firm has to offer, the number one reason that real estate agents remain or join a real estate firm is because of the overall management and leadership of the firm.

Real estate brokers can be recruited from two pools of prospects. They can be "rookies" that have never been in real estate and are starting from scratch. Or, recruiting can focus on building a firm with agents with experience from other firms.

### New Agent "Rookies" Recruiting

Oh, the public's view of the real estate industry is often much different than it is in actuality. From a consumer's perspective, a real estate agent drives around town in a nice car showing homes to clients and when the right home is found, the agent writes it up and sends the transaction off to the bank and escrow. About 6 weeks later the real estate agent gets a huge check. In reality, real estate agents work sometimes 24/7 including weekends to find prospects, work with clients, and try to get transactions closed.

Statistics vary from 50% to 70% of the first time real estate agents are gone to another job before their first two-year renewal period. Few people are really financially ready to take two years with only a few paychecks. But, many real estate rookies really believe, even though they are often told otherwise, that they will make money within only a few months of getting business cards printed. They often overestimate their savings and spending. Having a realistic ideal of how much a prospect needs to survive and how much that the prospect might have to invest can better prepare the prospect for the first year in a new real estate career.

In our society, a large percentage of people live paycheck to paycheck. A SunTrust Survey quoted in the Huffington Post Sept 2015, showed that one third of those making \$75,000 a year or less live paycheck to paycheck. According to the Washington Business Journal from a survey by Lending Tree, 44% of Millennials earning between \$100,000- \$149,000 live paycheck to paycheck.

Looking at the statistics from the Washington State Northwest MLS, there are over 23,000 real estate agents active in the Puget Sound area. In 2015 there were over 88,000 transactions that closed. That equals out to approximately 3.7 transactions per agent. Over history, this number has almost always hovered around three transactions per agent in

good and bad times. There are typically two agents in the transaction. One agent works with the buyer and the other is the listing agent. The average sale in the state is somewhere near \$315-\$350.

Average sale price;	\$330,000
Commission... between 4-7% often (let's say 6%)	\$19,800
Office split (often it is around 50%	\$9,900
Average of 3 transactions per year (times three)	\$29,700

Real estate agents typically either split the commission with their firm or they pay a desk fee. Often in both cases there are offices fees, B&O insurance, workers comp, E &O insurance, franchise fees, printing/advertising fees, administration fees, etc. The real estate agent does not get the entire amount in a check because there are always some fees.

Then there are expenses that must be made from monthly MLS fees and Realtor dues (if required). The agent must spend money on cell phones, car expenses and computers. There are taxes and insurance costs also.

The average real estate agent in Washington State makes about the same as a minimum wage worker makes at Seattle's new \$15 minimum wage law.

Do agents really make that little? Online statistics say that they make upwards of \$34,000 to over \$50,000 on average. But those are average estimates that never even begin to deal with what costs and fees are taken into consideration.

There are agents that make much more and agents that make much less. There are real estate agents that have been in the business for over 1-2 decades that make very little and some that have transactions coming at them every week. One very successful top producing office published statistics that their average was 9 transactions per agent per year.

When recruiting prospective real estate agents, it is important to give them realistic information about future income. Yes, they have the potential to make more money than they could imagine. They also could make far less than they need to survive. But, most importantly, they must be able to survive without an income for at least 6 months.

## What do Rookies Look for?

When choosing a real estate office to join, a new recruit looks for direction and training first and foremost; which may include mentoring. They will also look for costs to get started and what marketing materials provided. What a new rookie does not understand is how to find leads.

### Training

They type of questions regarding training that a brand new recruit might be asking might include:

Will your office provide training?

Will it be in-house or be delegated?

Who will pay for training?

How long does training take?

Will training continue to be available?

Is there a mentor program?

Will my commission help pay for training or mentor?

How will the rookie find business?

### Expenses

There are expenses that are necessary in order to start a real estate career. They can include the initial costs and fees to get licensed and for marketing. There are also ongoing fees and costs that are either monthly or are deducted from every sale.

Initial expenses can include:

Licensing fee, application, business cards, photo, and MLS fees.

There may be MLS classes that are required.

Monthly or quarterly charges can include:

MLS dues, Realtor dues, miscellaneous office fees.

There are costs to take a listing that can include:

For Sale sign, lock box, advertising, and a market analysis program and listing presentation.

For every payment of commission there are fees deducted that can include:

Error and Omission Insurance, franchise fees, unpaid marketing fees.

### **Marketing Materials Available**

In order to market to prospective customers, a new recruit will have to make use of marketing materials. Some larger firms and franchises have preprinted materials available. Smaller firms or those focusing on brokers self-marketing may not have closets full of materials. Most firms have a relationship with a marketing company.

Announcements for joining the company or for listings.

Just listed/sold hangers

Market analysis reports and software

Brochures of the company

Brochures / flyer templates for listings

Templates for listing presentations.

Is there a cost to me for this material? If so, how much?

Who pays for the postage? (Bulk and Individual)

Web design

## **Finding Prospective Rookies**

Recruiting for real estate brokers needs to be an ongoing campaign. The real estate industry typically has a revolving door full of about one third of the real estate brokers. There are always real estate brokers coming and always many leaving the business.

A real estate office business plan needs to identify the target for the number of real estate brokers. In addition, it is important to evaluate and plan for natural attrition. There is a tipping point at where the office size, staff, and resources will hit a maximum. There is a point where the number of agents and the resulting income will not support the resources.

### **Recruiting Manager**

Identify and delegate the responsibility for recruiting to one person in the firm. This person must be actively recruiting and ready to meet with prospective brokers. The manager needs to understand employment laws.

### **Prospecting for Recruits**

Real estate brokers come from all walks of life. They come in every size, shape, color, age and employment background. Their previous employment can include insurance agents, lawyers, doctors, home builders, laborers, restaurant servers, or store clerks to name a few. There are many people that become real estate brokers that were not previously employed including students and those who stayed at home supported by a spouse, for example. There is no list of characteristics or personality styles that will always contribute to the success of a broker. The most successful brokers rarely share much in common except their desire to succeed and their ability to connect with a large number of prospective home buyers and sellers.

Almost any person in a coffee shop, for example, could be a prospective real estate broker. So, how to find that person and have them join your firm is the ongoing challenge for every real estate firm, including your competition. There are a variety of ways to find recruits. It is most important to have a plan for the year ahead for recruiting.

### **Advertising**

There are places online like CraigsList.com and Monster.com where firms and teams across Western Washington are looking for new agents to join. There are literally hundreds of ads looking for real estate brokers. If those ads did not work, then they wouldn't be so numerous on a daily basis. The headline must grab attention in order to stand out from

the crowd. The call to action for most of the ads is to suggest the reader call or email an office. Often the links lead to a form on a website.

### **Direct Mail Campaign**

A real estate firm can target for new recruits with a direct mail campaign. It can go towards past clients or to neighborhoods in their market area.

### **Referrals**

The number of possible referrals for new recruits can be in proportion to the number of current real estate brokers working in the firm. All the current brokers are in the community and may have contacts with prospects. This can be encouraged with signing bonuses for referrals or even contests. This can be the most powerful and effective to find prospects, but it is often overlooked!

### **Community Outreach**

The more visible the recruiting manager or broker owner is in the community can have a positive effect on recruiting. Real estate offices used to be located often in retail store fronts in most small towns but now are hidden away in office complexes, it is often difficult for the consumer to put a face with the company. A good community presence can help with recruiting.

### **Social Media**

From Twitter to Facebook, social media is always buzzing about real estate. A quick search will find all kinds of tweets and posts about starting a new career in real estate.

### **Career Seminars**

A career seminar can be an effective way to bring prospects together to learn about a career in real estate. Marketing it through many channels from advertising, direct mail, referrals, community outreach, and social media can help build attendance.

It is important to create an ongoing campaign to find new prospective recruits.

## **Recruiting Experienced Agents**

Real estate brokers have a tendency to jump ship often in their careers. Some brokers play musical chairs working at many real estate firms in their careers. Real estate firms can change and go from independent to associated with a franchise or even change franchise. It is an ever evolving business.

There are always a certain percentage of brokers that are ready and willing to make a career move to another company. Recruiting from that pool of brokers can be considered a great benefit to the brokers and also a sly way to interfere with the competing brokerages who are also recruiting your brokers.

Brokers that are successful, as well as, brokers that are struggling can be shopping for another real estate firm to join. Their reasons can be extremely different but if the broker feels that the brokerage they currently are with is not meeting their needs, they may choose to change. It may be a decision that takes months or even a year or it can come quickly when teased away by another firm with a signing bonus.

The reasons that real estate brokers go from one firm to another firm are varied. Often it is centered on these major factors.

### **Management**

The style of management can have a drastic effect on the productivity, success, and loyalty of the real estate brokers. Some firm's management is quite corporate and strict while others have a style that is loose and non-invasive. If managers don't care about the brokers that can lead to a lack of allegiance.

Often, the office vibe can be felt upon entering the front door. A clash with management over anything from commission to referrals to personality can give a broker a reason to start shopping for another firm.

## **Training**

Newer brokers that are struggling may be looking for more direction and focus to build business. Some offices offer in-house training and mentoring or bring in speakers and programs. Experienced brokers want training on more specific or advanced issues that may not be available at other offices. There are some real estate offices that have no training or conference room.

## **Resources**

Real estate agents are often looking for support from the real estate firm to manage transactions, help produce marketing programs, and have technology support. Every firm offers a different menu of services for brokers. After any time in the business, brokers have an idea of what they want or feel they need to be successful. The menu offered by another firm may match the brokers wants. This can include office space, staff, marketing and technology.

## **Commission Splits or Desk Fees**

An experienced broker has already experienced one or more transactions and is aware of the split and fees they are currently experienced. They may be looking for a larger share of the commission or they are buried under the costs and fees at the last firm.

## **Lead Generation**

An experienced real estate broker has probably not had much experience with having been provided leads. Almost every real estate recruiting ad in the market guarantees real estate brokers with qualified leads.

## ***Why I left the Firm***

“I am ready to move to a larger franchise office.”

“I was in search of a better commission split/ desk fee. I feel like I am giving money away to the manager.”

“I was at the office 6 months and I never spoke to the manager. I don’t think she knew my name.”

“It was impossible to find a parking space at the office.”

“It just wasn’t a good culture fit for me at that office.”

“I don’t want to compete with my broker for clients.”

“There are office disputes over clients and commissions.”

“There are too many fees that keep showing up.”

“I’m lost in the big pond of large fish.”

## ***Why I joined another Firm***

“This office has more resources available.”

“I like the way staff at this office takes care of details.”

“I want to be in an office working alongside top producing agents.”

“This new office is keeping ahead of technology and having an internet presence is important to me.”

“The commission split/ desk fee is flexible and meets my needs.”

“It is important to be able to offer my clients a flexible commission structure and discounts.”

“This office promised referrals of qualified internet leads.”

“The reputation of this company cannot be matched.”

## **Finding Prospective Experienced Brokers**

The pool of experienced brokers is right there in front of every manager. Every firm needs to have a good handle on the benefits that are offered to brokers that join the firm.

### **Referrals**

The number of possible referrals for recruits can be in proportion to the number of current real estate brokers working in the firm. All the current brokers are in the real estate community and they are working with real estate brokers all over town. They know what is happening within other firms and, though Designated Brokers don't want to believe, the affiliated brokers in his/her firm are also looking and being recruited by other real estate firms!

Referring a potential recruit can be encouraged with signing bonuses for referrals or even contests. This can be the most powerful and effective to find prospects, but it is often overlooked!

### **Advertising**

Advertising online on sites such as CraigsList.com, Indeed and Monster.com have all kinds of offers to join real estate firms and teams. A broker that is unhappy at their current firm, may be scouting online for what other firms are offering in terms of commission splits, marketing opportunities, referrals, and tools available. The call to action for most of the ads is to suggest the reader call or email an office. Often the links lead to a form on a website.

### **Recruiting Manager**

Identify and delegate the responsibility for recruiting to one person in the firm. This person must be actively recruiting and ready to meet with prospective brokers. The manager needs to understand employment laws.

## **Interviewing Recruits**

The first contact directly with a prospect is the most critical. Though it is a cliché, "first impressions are lasting." People do make a decision about you and the firm from the first few minutes. That person walking through the door or calling on the phone could contribute more to the bottom line of your company than anyone else interviewed that year. They must be treated with the utmost respect.

The interview may be spontaneous or set up in advance with the prospect. Have a full presentation full of questions and answers but conduct it as a casual interview.

It can be more powerful to listen in an interview and avoid "bragging" about the firm too much. The recruiter is there to lead the interview using questions. Look for three reasons for hiring that person.

Questions that interviewers ask can include:

- How did you come to choose our firm to interview?
- What do you know about our firm?
- What motivates you to consider a real estate career?
- What are you looking for in a firm to start your real estate career?
- Have you worked with a real estate broker in a transaction?
- Are you financially able to handle many months without a paycheck?

Ask questions about the previous employment, education background, professional associations and community involvement.

If the recruit questions something negative about the firm, it is important to listen and ask how that rumor/story might impact their decision to join the firm.

## Know Labor and Discrimination Laws

There are strict employment laws in our country and in Washington State. The majority of real estate brokers are considered and treated under the laws as independent contractors. Many of the laws exempt independent contractors. Discrimination laws apply to all job positions. Every person regardless of their background has the right to be considered for a position. A short list of employment laws includes:

- Equal Employment Opportunity Commission 2002
- Title VII Civil Rights act of 1964
- Age discrimination in Employment Act
- American with Disability Act (ADA)
- Equal Pay Act of 1963
- Employee Retirement Income Security Act
- Minimum Wage
- Fair Labor Standards Act (FLSA)
- Occupational Safety and Health Act (OSHA)
- Family and Medical Leave Act
- Washington State Law on Discrimination
- Washington State Labor and Industries (L&I)
- Washington State Fair Labor and Practices
- Washington State Workers Compensation

When interviewing a real estate broker prospect, an employee or a staff employee, the discussion of the laws is covered in the section on hiring employees and staff.

When interviewing a prospect for a potential real estate broker position as an independent contractor, do not ask questions that may violate laws. Under Washington State Discrimination law, an interviewer may not ask prospects questions that could reveal the applicant's membership in a protected class. A protected class includes any questions that would identify or question the prospects race, color, religion, sex, national origin, familial status or handicap. This also includes sexual orientation. In Washington State, same sex marriages are legal so any questions on that would be considered discriminatory. Washington State is one of the few states that ended affirmative action in 1998. In order to avoid any sense of discrimination, avoid any questions that include:

- Pregnancy
- Citizenship Can only ask if the prospect is prevented from being lawfully employed because of visa or immigration status.
- Origin of the prospects name
- Maiden name
- Disabilities
- Age or number of Children
- Available to work on Saturday or Sunday (religious reasons)
- Where prospect grew up
- Sexual orientation or gender issues
- Age of prospect
- Student or Senior question (to discover age)
- Avoid questions about whether they are on government subsidies or their military discharge.

# Broker and Firm Records

## Independent Contractor Agreement

Every real estate broker in a firm should have an independent contractor agreement signed. The agreement should include, but not limited to the following:

- Services provided
- Office Accessibility
- Rules
- Licensing, Association Membership, MLS
- Compensation/commission
- Conflicts
- Ownership of listings/buyers
- Documents
- Communication/records
- Independent contractor definition
- Termination/compensation
- Non-disclosure

## Broker Personal Record

Real estate firms should have a record on each affiliated licensee. This record includes their license and renewal, emergency contact information, a record of any disputed issues, copy of car insurance rider, and a copy of continuing education documentation.

# Chapter 5

## Broker Training

### Section Objectives

#### Orientation

Know the importance of an orientation for all new recruits

#### Continuing Education

Identify the required continuing education for brokers, managing brokers

Know the additional training required for brokers within the first two years

Know the requirement for Ethics Training under the REALTOR Association

Identify the training needs of new and experienced licensees.

#### Productivity

Understand the independent nature of real estate brokers

Develop a plan to support the efforts of the affiliated brokers

Have a plan for communication within the office or in meetings

## Orientation

When a broker joins a firm, it is like the beginning of new relationship that could change their lives. The firm will have to create a way to make the recruit feel a belonging or a part of the organization. Most offices have an orientation program. It can vary from shadowing a broker to a full week of classes.

New orientation should include

- Basic corporate information including history, ownership and success. How the firm stands above the competition. What the strategic plan holds for the future.
- Company policies and procedures
- Company resources including technology, marketing, sales tools, and service
- Company communication strategies. How are new policies, services, procedures etc communicated to the members of the firm.
- Motivate new recruits to a feeling of belonging to the company and a place to create success
- Getting to know you. How can new recruits get to know other members of the firm?
- What is the process from beginning to end for each transaction?

The new recruit needs to have access to the policy and procedure manual. The basic office policies need to be addressed and discussed. The Brokers rely on the staff at the firm as their connection between client and the transaction. In addition, many firms have staff that help with marketing, MLS entry, and more. It is important to introduce staff and their responsibilities.

The flow of trust funds is a critical step in a real estate transaction. The earnest money, for example is a “hot potato!” Receipts need to be filed each time it is handed off to another person on the way to being deposited in trust. Transaction software can be difficult to understand initially, so new recruits need training on how to track and keep records and track of the flow of funds for all transactions.

New recruits are required by law to have a managing broker as a mentor for the first two years after licensure. This managing broker is to oversee all transactions and documents. The designated broker can take on this responsibility or delegate in writing to a managing broker in the office. The designated broker needs to put a strategy in place to meet this requirement.

# Continuing Education

Real estate is an industry that is constantly changing and evolving. From legal issues, to marketing and communication and technology. It is imperative to keep informed to better serve the consumers.

## Washington State Continuing Education Requirements

New recruits who are licensed less than two years are required to take 90 hours of continuing education prior to their first renewal which is two years from the license date. This must include the

- Advanced Real Estate Practices 30 hour course

- Real Estate Law 30 hour course

- Electives totally 30 hours. This must include a core curriculum which is a minimum of 3 hours.

All real estate brokers are required to take 30 hours of continuing education every two years. This must include a 3 hour core curriculum

Managing Brokers are required to have the same 30 hours of electives of continuing education as brokers. This must include a 3 hour core curriculum.

## Corporate Training

Real estate firms take different approaches to training affiliate brokers and staff.

The staff is often trained by the immediate supervisor. It is a good practice in an office to have a regular periodic staff meeting to discuss issues to make work more effective and productive.

In some cases, the real estate firm is just an umbrella with a number of licenses covered. Training is not provided to the affiliated brokers who are expected to find training in the industry.

Other firms have extensive in-house training programs with monthly calendars peppered with classes that can include required continuing education, as well as, topics on everything from market statistics, finance, social media and legal issues.

## Real Estate Ethics

Real Estate Ethics is a course required by the National Association of REALTORS. This is an industry wide organization. The course is based on the REALTOR Code of Ethics and Standards of Practice.

In most states, the local or state REALTOR association owns or runs the multiple listings association. In those cases, just about every real estate agent must join to have access to the MLS. In Washington State, this is not the case in most of the state. The largest MLS, the Northwest Multiple Listing Service, covers most of the Puget Sound area. It is a cooperative owned by the brokers. It is not a requirement for the firm or the affiliated licensees to belong. In Spokane, the REALTORS are in control of the MLS so all the agents needing the MLS are also Realtors.

The Code of Ethics class is required by the Association of REALTORS and is not required to be clock hours under the State of Washington. Some providers of the Ethics class turn it into the state go get approved for continuing education. The State does not give the course any priority. The Code of Ethics class is NOT related to the Department of Licensing Core Curriculum which IS required to be taken by all licensees every two years.

# Understanding the Independence of Brokers

One of the primary reasons that a person joins the real estate industry is the perception of a great deal of independence in return for an unlimited potential for income. The Designated Broker is tasked with the challenge to motivate, train and direct the work of a group of people that want to be independent. It is hard to gabe their work ethic, manage their efforts, and track their progress and productivity.

## Develop a Plan

Designated Brokers and their managers can make use of different ways to manage the affiliated brokers. It is a good idea to develop a plan to support the goals that the broker creates.

## Office support

One of the biggest challenges of a real estate broker is managing the listings and transactions along with advertising and marketing. They look for some support from the office.

## Encourage production

Some brokers react very successfully to games and contests while some avoid them. Contests within the office can help encourage brokers to reach for more activity and higher production.

## Recognition

Recognizing the accomplishments of brokers can encourage them to keep the momentum going.

## Reviews

Annual or semi annual review to see that the brokers are on track with their own goals can help build production.

## Communication

Communication is a key. It is important to have good communication with the affiliated brokers. Sometimes there is a push recruit brokers and once they have a key and the location of the office supplies they are left to fend on their own. I have talked to many brokers who never saw the person that recruited them again.

## Meetings

They cannot be mandatory to stay within the spirit and legality of staying independent contractors. If meetings are interesting and the information is compelling real estate brokers will come.

## One on one conferences

It can often be difficult to tie down a broker to have a scheduled meeting. It can cause anxiety for brokers that are not producing as they want. Sometimes the energy between the Designated Broker and the broker can include some friction. But, a one on one conference or review can be a productive want to see how they are achieving their goals.

## Emails and written communication

I've been to so many real estate offices and they brokers just don't read their emails or even paper communication. But, a regular short email with pertinent information can keep the brokers in the loop.

# Chapter 6

# Advertising within the Laws

## Sections Objectives

### Advertising Laws and Rules

Know the violations that can occur under Washington State Laws and Rules

Know how to explain Assumed Names and how to obtain one.

### Federal and State laws affecting real estate advertising

Know how to stay within the laws from Fair Housing, RESPA, and Title Insurance

### Misleading Advertising

Know what would be considered misleading advertising.

Washington State guidelines for social media advertising

## Washington State Advertising Rules

A real estate firm and the affiliated brokers must include the firm name as licensed in all advertising. It must be “clear and conspicuous” so that there is no misunderstanding by the consumer.

**A firm must operate under their firm name or an assumed name as licensed.** WAC 308-124B-210

All advertising or solicitations without limitation for brokerage services, must 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.

Any time a brokers or managing broker advertises using a name, title, or brand it must conform to the Department of Licensing laws and rules. If the broker or managing broker obtained an assumed name then this applies to that name. A broker should always :

- 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.
- 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."
- Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."
- 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 in all advertising 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.

## Assumed Names

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.*

The Real Estate Department of Licensing at the June meeting discussed Assumed Names.

License law enables firms to legally advertise assumed names and “teams” within their firms. However, the DOL is particular about advertising assumed names and “Teams” to consumers and the industry.

Firstly, the Firm name as licensed or DBA, or the assumed Name as registered with the DOL must be clearly displayed in all advertisements. This means the entire name! Initials, abbreviated firm names, or franchise names (without the actual local franchise name) are not acceptable.

All advertisements include and it is not limited to:

- Signage on buildings

- Websites

- Business Cards

- Any other printed materials

- All social media.

Secondly, a FIRM must request an assumed name. the assumed name can only be used in advertisements if the designated broke and the FIRM request the name through the office of the DOL. Once the DOL approves the name, it belongs to the firm. The firm should make that clear to the broker, whose name might become the firms property.

Thirdly, if you are working with a group using a “team” name, you must have the name of the firm clearly and conspicuously on all advertisements. The team name should never confuse anyone as to the identity of the licensed firm. The firm may have a DBA or use an assumed name... whatever the firm name is under the DOL must be on all advertisements by agents and teams.

## Federal and State Laws

There are federal and state laws that affect all real estate advertising.

### Fair Housing

This is covered in the section on Fair Housing. You cannot show a preference, limitation, or discriminate in your advertising due to a protected class.

### RESPA

You cannot advertise the interest rate or payment without giving the consumer all the pertinent information on the loan including the Annual Percentage Rate. Lenders cannot pay directly for your advertising.

### Washington State Title Insurance Laws

You cannot accept anything of value from a title insurance company including advertising.

## Misleading Advertising

### Photographs

In an effort to present a property in a good light, real estate agents have been known to run false or misleading advertising. In fact, some agents hear that “everybody’s doing it” and ignore the fact that it could be misleading. The photograph of the property must be a true and current representation of the property. It would be misleading to alter photographs to mislead the consumer. Examples can include:

- Altering a photograph to eliminate the power lines that loom overhead.

- Altering the view out the windows.

- Adding something to the photograph that is not there

Updating or fixing visible problems evident to the house like a poor roof

### **Drone Photos**

The laws have been lifted by the FAA for using drones for real estate. But there are still laws that limit the height and where a drone can be flown. It would be a violation to take a drone photo of a listing next to an airport, for example. This could include float planes in Seattle.

### **Descriptions**

The description of the property must also not be misleading. This can include statements like:

Minutes to the beach.. .when it is about 40 miles away

Quiet neighborhood when it is near a gun range

### **False Quotes**

Altering a quote or writing a fictitious quote about the property or the agent

Underquoting the actual listing price of a property

### **Brokers Profile**

A broker must be truthful in self promotion

A broker should not mislead a consumer as to whether they belong to an association

*A broker used to advertise as the top agent in the Seattle Real Estate Association which consisted of himself and one other person.*

*A broker used to advertise that he had "20 years experience." He was a new agent who had 20 years experience in a technology firm.*

## **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.

## **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 match. 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 statutes 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.

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.

This is the page about the Syndication partners for Postlets.

### Postlets Syndication Partners

Postlets helps housing shoppers find listings by sending them to the following network of distribution partners. Each listing you create on Postlets is automatically distributed to these partner sites to maximize your exposure, and drive more leads.



RentBits  
Walkscore  
RentJungle  
Rentenna  
Zumper  
MapLiv  
RentMatch

AOL Real Estate  
LiveLovely  
Enormo  
Oodle  
Military.com  
Facebook  
BackPage.com

ByOwnerMLS  
Vast  
Trovit  
Geebo  
Yakaz  
MyNewPlace

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."

### You are Number

Under the CFPB regulations, you are required to identify yourself with your real estate license number. This number is on your real estate license hanging in the real estate firm. In addition, it is on the wallet card you were provided. It can also be found by looking on the Department of Licensing website at [www.dol.wa.gov](http://www.dol.wa.gov). The Dept. of Licensing MAY issue a rule requiring the license number on all advertising but it is only in discussion at this time.

# Chapter 7

# Legal Boundaries and Disputes

## Section Objectives

Know the laws and responsibilities under the following:

- Fair Housing
- American Disabilities Act
- Anti Trust
- RESPA
- Title Insurance
- Sexual harassment.

Identify issues and options relating to Dispute Resolution.

## Anti Discrimination

### The Laws are Clear... You are not to Discriminate!

Real Estate brokers, Property Managers, Landlords AND sellers cannot discriminate based on a protected class. EVERY person reading this is a member of protected classes because you all can be defined by race, color, religion, sex, national origin, familial status ... and maybe handicap.

Does the seller have the right to choose one buyer over another? Let's say that the sellers would love to have a little family live in the house where the sellers raised their children. Is it legal for the sellers to choose the little family over a single white divorced man? What if the sellers would prefer to sell to a family that emigrated from the same country instead of a gay married couple? Do the sellers have the right to choose the people that buy?

The answer is NO! The sellers do not have the right to choose the buyers because of their race color, religion, sex national origin, familial status or handicap under Federal laws. In addition, states and local communities have gone farther to protect people from discrimination by adding protected classes including sexual orientation, gender identity, and political ideology. Check your community. But, most importantly... don't discriminate!

When a buyer buys a property, the buyer purchases a bundle of rights and a bag of restrictions. The owner of a property cannot decide to board horses in the backyard of a city lot or add an additional 3 stories to a home in a suburban neighborhood. The owner may not be able to paint the house purple or avoid mowing the grass. The restrictions can include everything from paint to business. The restrictions can come from Federal State and local laws. In addition, there are fire codes, homeowner association rules and building codes. The same is true for discrimination. The seller does not have the right under Federal, State, and Local laws to discriminate when selling their house.

### About 150 years Ago the first Anti Discrimination Law Passed

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. In 1896, the Supreme Court decision Plessy v Ferguson established the

separate but equal doctrine that was followed in many parts of the country. Anyone who wasn't white was "colored" and the "Jim Crow" laws allowed separate accommodations for restaurants, water fountains, hotels, etc. These laws were legal until the Federal Fair Housing Act passed.

The Fair Housing Act passed in the 1968, outlaws a variety of private discriminatory acts, including refusal to rent or sell, discrimination in the terms of sale or rental, blockbusting, and discrimination in advertising and in the use of real estate services. The protected classes include:

<b>Race</b>	<b>Religion</b>	<b>National origin</b>	<b>Handicap</b>	<b>Color</b>	<b>Sex</b>	<b>Familial Status</b>
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In 1974, the Fair Housing Act was expanded to include prohibition of gender discrimination, and Section 8 programs were created

In the 1970's, various Federal legislation was enacted to prohibit discrimination in federal programs, and to include additional protected classes. Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against handicapped persons.

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. In 1988, the coverage of the Fair Housing Act was expanded and two protected classes were added:

1. Families with children
2. Handicapped persons.

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.

Note, that senior housing developments must have 80% of units "occupied" and not owned by seniors.

## **Summary of Prohibited Acts under the Federal Fair Housing Act**

1. Any refusal to sell or rent, or otherwise make unavailable, a dwelling after receiving a bona fide offer, or refuse to negotiate for the sale or rental of a dwelling, because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.
2. Discriminating in the "terms, conditions, privileges, or services of the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.
3. Engaging in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

4. Make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. This advertising prohibition applies to private owners who may otherwise be exempt from the Act.
5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
6. Engaging in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.
7. Denying access to, or participation in a multiple listing service, brokers association or other organization to the business of selling or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin. This also includes creating terms or conditions on membership based on a prohibited criteria.
8. For person's whose business includes engaging in the business of residential real estate related transaction, to discriminate in making available, or in the terms or conditions of, any residential real estate related transaction because of race, color, religion, sex, handicap, familial status or national origin
9. "Coerce, intimidate, threaten, or interfere with" any person exercising a fair housing right or on account of a person having assisted others in exercising such rights.

### **Discriminatory Representations on the Availability of Dwellings**

Under the Fair Housing Act, it is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental. HUD's regulations specifically list the five following prohibited actions, if such actions are done because of race, color, religion, sex, handicap, familial status, or national origin. These five items are only examples and the Act also prohibits other activities not necessarily listed below:

- (1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.
- (2) Representing that instruments such as deeds, trusts, CC&R's, or leases, which purport to restrict the sale or rental of dwellings because of a protected class, preclude the sale or rental of a dwelling to any person of a protected class.
- (3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of a protected class.
- (4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.
- (5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether they are actually seeking housing.

*SITUATION: An Asian woman wants to rent an apartment near her office. The Agent knowing the racial makeup of the neighborhood near her office is different, says that there isn't anything available in her price range in that area. Is this a violation? What if there isn't an apartment available?*

### **Blockbusting**

The Fair Housing Act provides that it is unlawful for a person to engage in "blockbusting." This occurs when a person, such as a real estate broker, for profit, induces or attempts to induce a person to sell or rent a dwelling by making representations regarding the entry (or prospective entry) into the neighborhood of persons of a particular race, color, religion, sex, handicap, familial status, or national origin. Most blockbusting cases involve a real estate broker's uninvited solicitation of homeowners to sell or rent their homes. It is sometimes referred to as "panic selling."

According to HUD's regulations, blockbusting occurs in the following two examples (but, of course, is not limited to these two examples):

- (1) Engaging, for profit or the availability of a profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing a change, or is about to undergo a change, in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.
- (2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry (or prospective entry) of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

*SITUATION? Bill tells homeowners that this is the time to sell because the neighborhood is changing and the gang activity is increasing.*

## **Steering**

Steering is a practice whereby a real estate agent influences a person's housing choice based on prohibited criteria. The classic example is that of directing minority or all minority neighborhoods.

*SITUATION: Steve assumes his clients would "feel more comfortable" in certain areas because others of their background live there. Maybe his clients are Jewish and he directs them to neighborhoods near the synagogue where other Jewish people are living. Is this steering?*

## **Discrimination in Brokerage Services**

The Fair Housing Act provides that it is unlawful to discriminate in the provision of real estate brokerage services. Specifically, the Act prohibits the denial of any person, based upon a protected class, access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings. The Act also prohibits discrimination against any person in the terms or conditions of such access, membership or participation, if such discrimination is based upon race, color, religion, sex, handicap, familial status, or national origin.

*SITUATION: Doug sends all his prospects that do not speak the English Language well to other agents. He says that they can be better served by them.*

## **Prohibitions Against Discrimination Because of Handicap**

The Fair Housing Amendments Act of 1988 extends Title VIII to the physically and mentally disabled. The Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of a dwelling, or to otherwise make unavailable or deny a dwelling, to any buyer or renter because of a handicap of:

- (1) that buyer or renter.
- (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.
- (3) any person associated with that buyer or renter.

The Act also prohibits discrimination against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of such handicap. The disabilities covered include hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS and AIDS related illness, and mental retardation.

## **Consequences of Federal Fair Housing Violation**

The potential penalties for violation of fair housing laws are so severe that responsible real estate brokers simply cannot assume the risk. Furthermore, fair housing cases are almost always excluded from errors and omissions policies.

An aggrieved person is one who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur. A person can be one or more

individuals, corporations, partnerships, or associations. An aggrieved person who believes to be a victim may bring an action directly in federal court or may file a complaint with HUD. If HUD finds reasonable cause, the case may be tried before a HUD Administrative Law Judge (ALJ) or before a federal district judge. If state or local law is deemed by HUD to be substantially equivalent, HUD will refer complaints from that jurisdiction to the state or local agency for processing.

Both ALJ's and federal courts may award actual damages, attorney's fees and issue injunctions to prevent any further discriminatory practices. An ALJ may also assess civil penalties, limited to \$10,000 with not prior offense, \$25,000 with one prior offense within five years, and \$50,000 with two prior offenses within seven years. A federal court judge may also impose an unlimited amount in punitive damages plus attorneys fees and costs.

One example of the importance of complying with federal fair housing laws, in July of 1992 a judge ordered a Washington D.C. area property management company to pay \$2.41 million in damages to a woman who said the company refused to rent an apartment to her because she has children. In 1990, after being told for the second time that the building in which she and her children had hoped to rent was an "all adult building", plaintiff, Carrie H. Timus sued the management company, claiming it violated federal fair housing laws that prohibit discrimination on the basis of familial status.

The damages award underscores the seriousness with which juries are viewing cases that involve discrimination against families with children. "The extraordinary amount of the damages award send a message that society is not going to tolerate discrimination against families with children," said NAR General Counsel Laurence K. Janik.

## Washington State Discrimination Law

Washington State Law in RCW 49.60 prohibits discrimination in employment, credit, and insurance transactions, in public resort accommodation or amusement and in real property transactions. The protected classes include:

Race	Sex	Color	Disability
Creed	Marital status	National Origin	Service Dog
Color	Age	Sexual Orientation	

\* presence or any sensory, mental, or physical disability or use of a trained guide or service dog by a disabled person. 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 specifically in the discrimination law, it is now legal for same sex marriages so they would be considered under a protected class of marital status.

The law applies to ALL real property transactions including sale, appraisal, brokering, exchange, purchase, rental, or lease of real property or applying for a real estate loan. The word "handicap" was amended to read "disability." Individuals with HIV or perceived HIV infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability. Landmark legislation was passed and became effective in 2006 making Sexual Orientation a protected class in this state. In addition, it is now legal for same sex couples to be married in Washington State.

## 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.

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.

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 for real property, or honor or attempt any condition, 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?
- Does 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 buyer's 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

Seattle currently includes these protected classes:

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

\*Not applicable to Employment or Fair Contracting cases

\*\*Not applicable to Public Accommodations cases

In 2016 Seattle City Council passed the First Come First Serve law discussed under Landlord Tenant law. This will require landlords to choose the first qualified applicant for a rental property instead of choosing who they want from the pool of applicants. In addition, the city has passed laws regarding limiting deposits on rental property.

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

## Condo Board denies Family from living in Subdivision

by Karen Peirolo, 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.

## **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.

## **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.

An example of a love letter (edited) from the Seattle PI article in 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

Are these types of 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.

Let’s say that the sellers read the love letter and chose the “perfect little family” with a lower offer than the other letters from a single man, a gay couple, a relocation buyer from another country, a disabled person, etc. They may assume that no one will find out. The sellers and the agent think up reasons why the little family is more qualified. But, if any other buyer feels that there was discrimination, that other buyer has the right to file a complaint. And then the case is open. Whether a complaint is filed or not... there is still discrimination here. The agent participated and was aware of the violation. If the complaint moves forward all parties would have to tell the truth under oath.

If you speed down the road going over the speed limit set, you are still violating the laws even if you don’t get caught. Getting caught does not determine there is a violation. Getting caught starts the process because the violation may have existed.

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 comes 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.

### **Do the Sellers have the “right” to discriminate?**

The sellers do not have the right to choose one buyer over another if that choice would violate Federal, State and Local discrimination laws. By choosing a “little family” over a single man, the familial status of the buyers was part of the decision making process. The single man had just as much right to purchase a home as a little family. The same goes for choosing because of a limitation or preference based on race, color, religion, sex, national origin or familial status or disability. In Washington State add sexual orientation. In Seattle and other jurisdictions protected classes can include military discharge, political ideology, Section 8, and parental status, for example.

A homeowner purchases a home along with a bundle of rights and a bag of restrictions which can include zoning, home owner associations, and fire codes. Those restrictions also include making the home available to people for sale or rent regardless of their protected class.

# Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA), a federal law, became effective in 1992 to ensure that disabled persons have equal access to public facilities or in any place of public accommodation. It also makes it illegal to discriminate in employment against an otherwise qualified individual because he or she has a disability. The ADA makes it unlawful to discriminate against people with disabilities. An individual is considered disabled if he has one of the following, (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a record of such impairment, and (3) is regarded as having such an impairment. Examples include impairment in walking, seeing, caring for oneself, a history of mental illness, heart disease, cancer, cerebral palsy, muscular dystrophy, multiple sclerosis, diabetes, AIDS, and HIV infection.

A public Accommodation includes real estate offices. It also covers hotels, restaurants, retail stores, shopping centers, banks, apartment buildings, parks, doctor offices and commercial establishments. It requires that

- Reasonable modifications are to be made in policies, practices and procedures in order to make goods or services accessible to those with disabilities.
- Barriers including structural and transportations must be removed if readily achievable.
- Auxiliary aids and accommodations are to be provided so that goods and services are available to disabled.

Another area in which the Office on the ADA has commented relates to model homes. If a sales office for a residential housing development is located in a model home, the area used for the sales office is considered a covered place of public accommodation and must be accessible, although model homes and open houses are generally not considered to be places of public accommodation. The Office on the ADA has stated that developers should voluntarily provide a minimal level of access to the homes for potential homebuyers with disabilities.

Both a tenant and owner of a place of public accommodation are subject to ADA compliance. Real estate brokers representing parties to transactions involving places of public accommodations should recommend that their clients hire experts to conduct an ADA review.

The ADA requires that employers make reasonable accommodation to the known physical or mental disabilities of a qualified applicant or employee, unless it would impose an undue hardship on the employer. Reasonable accommodation will be decided on a case-by-case basis, but may include job restructuring, modified work schedules, providing readers or interpreters, raising a desk for a person with a wheelchair, or allowing a person to bring a service animal into the workplace. For example, if a person has requested an interpreter, it is necessary to provide a qualified interpreter. A qualified interpreter is one "who is able to interpret effectively, accurately and impartially both receptively and expressively using any necessary specialized vocabulary."

Employers with 15 or more employees may not discriminate in the recruitment, hiring, training, job responsibilities, promotions, pay, benefits, layoffs, firing or any other employment activity because a person has a disability.

The U.S. Department of Justice enforces the ADA through complaints, lawsuits, and settlement agreements. However, private parties may bring lawsuits under the ADA. In addition, the attorney general can file a lawsuit when there is a pattern of alleged discriminations or in cases of general public importance. A party found in violation of the ADA can face mandatory compliance, monetary damages, and civil penalties. The maximum civil penalty is \$75,000 for a first violation under Title III of the ADA and \$150,000 for a subsequent violation occurring on or after April 28, 2014. (Updated April 2016 Texas REALTORS)

# Anti-Trust

## The Consumer Protection Act

In Washington State the Consumer Protection Act RCW 19.86 is to protect the Washington State marketplace free from unfair and deceptive practices. The Consumer Protection Act is enforced by the Consumer Protection Division under the Washington State Attorney General's office. The Division investigates and files legal actions to stop unfair and deceptive practices, recover refunds for consumers and imposes penalties on offending businesses and recovers attorney's fees and costs. Civil action can also be taken. Unfair practices can include the same kind of anti-competitive activities that violate federal anti-trust law such as price fixing, boycotts and tying agreements.

## Sherman Anti-Trust Act

Over 125 years ago, the Sherman Act was passed to promote the policy and practice of competition and prohibit any agreement that has the effect of unreasonably restraining trade including conspiracies. It is so important in the real estate industry because if all of the brokerages got together and decided what to charge there would be restricted competition. By doing that, real estate firms, associations and groups could block others from introducing different business models that may be competitive. The commissions that real estate firms and brokers charge are not fixed or determined by any association or multiple listing service. The amount of commission paid to a cooperative broker in a transaction in a multiple listing service is also not fixed.

The activities that are prohibited that may violate anti-trust laws include:

### Price Fixing

Price fixing is defined as the cooperative setting of prices or price ranges by competing firms. To avoid any appearance of price fixing, two brokers from different firms should not discuss their commission rates. Commission fees charged consumers should never be discussed in classes or broker meetings. The REALTOR associations across the country and in the State of Washington do NOT set commissions. It would be unlawful to discuss commissions at REALTOR meetings because it may appear to be an attempt at price fixing.

*At a real estate class, a broker discussed how he charging a higher commission and that if the others in his area would go along with the higher commission they could all make more money. This is an obvious violation of the Sherman Act.*

### Boycotts

A group boycott is an agreement between two or more real estate brokers to exclude other firms from fair participation in real estate activities. This can include avoiding doing business with a particular broker or an entire firm. The purpose of the boycott is to hurt or destroy a competitor which is unlawful.

*At a meeting of a real estate firm an agent brought up the topic that a competing firm was offering lower commission than her own firm to brokers that sold that firms listing. The broker did not feel that was "fair" and that her firm should avoid showing that firms listings. This is an obvious violation.*

### Tying Agreements

A tying agreement is defined as an agreement to sell only product on the condition that the buyer also purchases another product.

*This is most often seen in the real estate industry when a real estate broker sells a builder land for a discounted commission if the builder lists the new construction homes with the broker when complete. This is also called a "list-back" agreement.*

### Market Allocation

When competing real estate firms agree to split the market area so that one firm will specialize on one side of the market and the other will specialize on the other essentially dividing the town into territories. This would limit the competition in the town and restrict the choices that consumers would have for selling their property.

*A group of real estate firms meet at lunch and decide that they will each take and market to opposite sides of the river to avoid "stepping on each other's toes." This would be a violation.*

# Real Estate Settlement and Procedures Act RESPA

RESPA Violations for Real Estate Agents can be enforced by the CFPB in many ways. Real estate agents need to be especially be aware of RESPA Section 8(a) and (b).

Section 8(a) states that, “No person shall give and no person shall accept any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.”

Basically, Section 8(a) prohibits a person or entity from providing a fee, kickback, or “thing of value” in exchange for a referral of business relating to a real estate settlement service

“Thing of value” is defined as any payment, advance, funds, loan, service or other consideration

Regulation X, which the CFPB has amended, further clarifies a “thing of value” to include the phrase “connected in any way with the volume or value of the business referred”

RESPA Violations for Real Estate Agents

8(b) states that, “No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.”

*Bottom Line:*

*Real estate agents need to be extremely wary of payments for the referral of business. If a lender, title company, or law firm offers a real estate agent any sort of gift for the referral of business, that’s a RESPA violation. The issue is receiving anything beyond your due compensation for the referral of settlement transactions.*

*Even an opportunity to win something (like a vacation) would be considered a thing of value for the referral of business.*

RESPA violations can carry significant consequences.

- A fine up to \$10,000.00
- Imprisonment (for up to 1 year)
- In some cases, RESPA allows for a private cause of action, which will permit the consumer to sue all violators for up to three times the amount paid for settlement services

Remember, the CFPB is actively pursuing individuals, as well as real estate companies.

## Regulation Z

The truth in lending act was enacted in 1969 to assure meaningful disclosure of credit terms to the consumer will be able to compare more readily the various programs available. For real estate brokers it affects advertising 1-2 unit residential property. It applies to advertising where the potential consumer will use the property as a principal dwelling. When advertising any kind of loan program, the Annual Percentage Rate APR, Simple interest rate, the down payment, the monthly payment and the terms of the loan must be disclosed.

## Marketing Service Agreements

MSA’s have become popular as a means for settlement service providers to purchase general advertising services directed towards consumers. In addition, there are agreements for providers to purchase office space in return for the ability to do business directly with the brokers.

Under these MSA's, a settlement service provider, like a title company, engages another service provider, such as a real estate agent business, to perform marketing services in exchange for periodic fixed fees that are not directly based on volume of business. In some cases the payments are actually disguised compensation for referrals.

The Consumer Financial Protection Bureau (CFPB) in October 2015, issued a bulletin providing guidance to the mortgage industry regarding marketing services agreements. The bulletin offers an overview of the federal prohibition on mortgage kickbacks and referral fees, and describes examples from the Bureau's enforcement experience as well as the risks faced by lenders entering into these agreements. During the course of supervising mortgage lenders and enforcing federal law, the Bureau found that marketing services agreements carry legal and regulatory risk for lenders.

"We are deeply concerned about how marketing services agreements are undermining important consumer protections against kickbacks," said CFPB Director Richard Cordray. "Companies do not seem to be recognizing the extent of the risks posed by implementing and monitoring these agreements within the bounds of the law."

The CFPB is responsible for enforcing the Real Estate Settlement Procedures Act, which was enacted in 1974 as a response to abuses in the real estate settlement process. A primary purpose of the law is to eliminate kickbacks or referral fees that tend to increase unnecessarily the costs of settlement services. The law covers any service provided in connection with a real estate settlement, such as title insurance, appraisals, inspections, and loan origination.

The bulletin explains that while marketing services agreements are usually framed as payments for advertising or promotional services, in some cases the payments are actually disguised compensation for referrals. Any agreement that entails exchanging a thing of value for referrals of settlement service business likely violates federal law, regardless of whether a marketing services agreement is part of the transaction.

The bulletin describes a number of legal violations the Bureau has encountered in investigations involving kickbacks and referral fees. For example, the CFPB found a title insurance company that entered into marketing services agreements where the fees paid by the company were based in part on the number of referrals it received, as well as the revenue generated by those referrals. In another case, a settlement service provider did not disclose its affiliate relationship with an appraisal management company and did not tell consumers that they had the option of shopping for services before directing them to the affiliate.

The CFPB's enforcement actions against companies and individuals for violations of the Real Estate Settlement Procedures Act have resulted in more than \$75 million in penalties to date. The payment of improper kickbacks and referral fees has been the basis of almost all of those actions. As the bulletin notes, the CFPB intends to continue actively scrutinizing the use of such agreements and related arrangements in the course of its enforcement and supervision work.

## **Title Insurance Regulations**

Title insurance companies along with closing agents are a critical part of a real estate transaction. They must work under the Real Estate Settlement and Procedures Act (RESPA) which is a federal law. This regulates almost all aspect of the closing of a transaction from money held in trust to final signatures on documents and disbursements of funds.

In the State of Washington, the Title Insurance companies are regulated under the Washington State Office of the Insurance Commissioner. (OIC). The state has passed regulations prohibiting a title company from providing anything of value to real estate brokers or firms as an inducement for referring their clients for business. The reason is due to the high amount of competition with a large number of title insurance companies vying for business throughout the state.

The real estate Department of Licensing also has laws that strictly prohibit a real estate licensee from accepting anything of value from a title insurance company. Most real estate brokers are aware that the title insurance companies are

prohibited from such practices, but few brokers realize that the acceptance of any kickback is prohibited under their own real estate license law. The section of the law that deals with this issue is RCW 18.85.053.

A real estate licensee or a person who has a controlling interest in a real estate business shall not, directly or indirectly, give any fee, kickback, payment or other thing of value to any other real estate licensee as an inducement, reward for a referral. Any real estate licensee cannot refer business to a title insurance agent in which the real estate licensee of also has a financial interest.

A licensee cannot solicit or accept anything of value from anyone in a title insurance company that the OIC has prohibited being given to a licensee.

A real estate firm or licensee cannot prevent or deter a title insurance company or their representatives from delivering promotional materials concerning title insurance to real estate licensees. Any material delivered to licensees must:

- a) Be business appropriate and not misleading or false
- b) Does not malign a licensee
- c) Is limited to those areas of the real estate office that is for public access
- d) Delivered in an appropriate manner and doesn't threaten the safety or health of anyone in the office.

## **Sexual Harassment**

Even in this day and age, sexual harassment in the workplace still exists. The 1964 Civil Rights act in Title VII defines it as unwelcome sexual advances or other sexually oriented conduct connected to a victim's employment or work performance.

There are two categories of sexual harassment. The first one is when someone tries to forcibly turn a business relationship into a romantic one. There may be threats if the person does not stay in a relationship or there is some condition of staying in a relationship in order to receive a paycheck or business deal.

The second category is where there is a sexually charged atmosphere so severe and pervasive that it alters the conditions of employment. This can include raunchy humor, sexual banter, unwanted touching, and pornography.

Both kinds of sexual harassment still exist within real estate offices. It is important for the Designated Broker to be aware of any conduct that could be considered sexual harassment and to have training so that the affiliated brokers and the staff are aware and free to report conduct that makes them feel uncomfortable in their jobs. The door must be open and a policy in place that also deals with retaliation.

## **Dispute Resolution and Options**

When a dispute arises due to a problem in a real estate transaction, most parties fall into one of two camps: Those that are too eager to sue and those that are too scared to litigate. This can lead to unfair results. In an effort to avoid the involvement of lawyers, some parties give in and give up their rights or claims even though they are entirely correct in their position and could receive redress with little effort. On the other hand, some parties casually threaten litigation as if it were a mere inconvenience rather than an onerous process.

An example might be a failure to close on a transaction and both parties claim the earnest money. There are times that the buyer is dues the earnest money because they could not purchase the home because of a seller's failure to disclose a significant issue. But, the sellers, claim that the buyers should still close and that it is not significant. The sellers are coached by the real estate broker that they have the right to the earnest money. The buyers are coached that fighting

for their earnest money may cost them too much... So, even though the buyers were due the earnest money from an objective point of view, they may lose it and just give in.

When a dispute arises, the parties need to understand their rights and the various options that would help resolve their issues. Armed with this information, parties are often able to reach an agreement that is fair to all and quite efficient.

When a dispute cannot be resolved through reasonable discussion, there are four main options available: mediation, arbitration, litigation, and small claims court.

### **Mediation**

Mediation is a non-binding process in which the parties, with or without attorneys, meet with an independent third party, to come to a common agreement. In practice, this can be a very useful step because it helps the parties understand their rights and obligations, and the cost associated with continuing their dispute.

### **Arbitration**

Arbitration is somewhat like mediation, but with teeth. In arbitration, the buyer and the seller arrange for the services of a private arbitrator to settle the case. Instead of a trial, arbitration provides an informal hearing with the arbitrator, the buyer, the seller, and usually their attorneys. Documents may be submitted and witnesses may testify. Following a hearing, the arbitrator renders a decision, which is generally binding even if wrong.

While arbitration is generally less costly and time intensive than litigation, it is still an expensive undertaking and usually involves attorneys. It is important to check the forms to see if there is an arbitration clause. A party may have to initiate a separate action in court to seek damages from a real estate agent or broker whereas they would have been able to sue both the agent and the other party in the same action if they had not initialed the arbitration clause.

### **Litigation**

Litigation is simply suing someone in court, and it is both expensive and time consuming. However, many argue that its outcome is more predictable than that in arbitration. This predictability comes, in part, from the fact that judges do not want to be overturned on appeal, so they are very careful to follow the law established by prior cases.

### **Small Claims Court**

Irrespective of whether the parties initialed the arbitration clause, small claims court is a third option available to settle disputes. The process is fairly simple and each party represents themselves. The elimination of attorneys on both sides makes this a valuable, albeit underutilized, option for many of the smaller issues that might arise after a sale.

Although vigilance and good professional guidance would keep most buyers and sellers out of disputes, a thorough understanding of the contract terms and the dispute resolution options will provide guidance should the unexpected arise. It is also wise to speak with a qualified residential real estate attorney early in the dispute process to prevent any unfortunate actions and results.

# Chapter 8

# Trust Accounting Record Keeping and Fraud

## Section Objectives

### Handling Trust Funds

Describe established procedures to collect, receipt, deposit, record and disburse trust funds.

### Auditing a Firm

Describe tasks performed by Department of Licensing auditors during a routine audit.

### Investigation Insights

Identify the current hot issues from the Dept of Licensing

### Payment of Real Estate Commissions

Know how to compute a real estate commission on a net listing

### Fraud

Understand that fraud occurs on all levels of real estate transactions

## Handling Trust Funds

The handling of client trust account money and records is one area when firms run into challenges. These challenges keep the Washington State auditors busy. Any client funds must be handled with care, meet deadlines for deposit and be receipted.

Consumer funds if held by a firm, must be handled properly. The misuse of funds can result in a violation of the laws and rules. If any broker exercises control over real estate transaction funds, those funds are considered "trust funds."

Current Washington State guidelines require that all money relating to the sale, rental/ lease or option for real estate or business opportunity must be placed in a trust account in a bank, savings bank, or credit union. The designated broker of the firm is responsible for the administration of trust funds including:

Depositing

Holding

Disbursing

Receipting

Posting

Recording,

Accounting to principals

Notifying principals and cooperating licensees of material facts

Reconciling and properly setting up trust accounts.

All checks received as earnest money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property or business opportunities owned by clients shall be made payable to the real estate firm as licensed unless it is mutually agreed in writing by the principals that the deposit shall be paid to the seller or an escrow agent named in the agreement. The real estate firm shall retain a copy of the written agreement. Though the law specifies "checks" this would also include wire transfers or other transfer of funds for a transaction.

In many cases, real estate firms do not have bank trust accounts and the contracts will specify that the checks are made out to the closing agent to be put into a trust account.

These funds cannot be used for the benefit of the broker, managing broker or real estate firm. They cannot be co-mingled with other funds or used for operating expenses.

All licensees must keep the party to whom they provide brokerage services, informed of the earnest money deposit status. In addition, the licensee must retain and provide copies of the receipts to the principals and participating firms.

If a firm takes earnest money or client funds for deposit into a firm's trust account, the real estate firm shall maintain a pooled interest-bearing trust account for deposit of client funds. Property management trust accounts are exempt from the interest bearing accounts. The interest accruing on the account less any bank service fees or charges is paid to the state treasurer for the Washington Housing trust fund and the real estate education program account.

## **Earnest Money Collecting and Depositing**

All brokers and managing brokers will physically deliver all funds, moneys, negotiable instruments or items of value to the appropriate managing broker, branch manager or their designated broker within the shorter of the following:

- Two business days of the client's signature. Business days do not include Saturday, Sunday or legal holidays as defined in the Washington State laws. These include New Years' Day, Presidents' Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Veterans' Day, Thanksgiving Day, Native American Heritage Day (the Friday after Thanksgiving) and Christmas Day.
- Sooner if the terms of the written contract necessitate quicker delivery.

The Washington Administrative Code (WAC) establishes the responsibilities for the designated broker for handling trust fund monies. The designated broker is responsible for handling trust funds as provided herein. Bank accounts shall be designated as trust accounts in the firm name or assumed name as licensed.

### **Interest on Client Trust Funds**

Interest credited to a client's account must be recorded as a liability on client ledger. Interest assigned or credited by written assignment agreement to the firm may not be maintained in the trust account. The designated broker is responsible for making arrangements with the financial institution to credit this interest to the general account of the firm.

## **Record Keeping and Depositing Earnest Money**

The designated broker shall establish and maintain a system of records and procedures approved by the real estate program that provides for an audit trail accounting of all funds received and disbursed. All funds must be identified to the account of each individual client.

Alternative systems of records or procedures proposed by a designated broker shall be approved in advance in writing by the real estate program. The designated broker shall be responsible for deposits, disbursements, or transfers of clients' funds received and held in trust.

### **Depositing funds into Trust Account**

All brokers and managing brokers will physically deliver all funds, moneys, negotiable instruments or items of value to the appropriate managing broker, branch manager or their designated broker within the shorter of the following:

- a) **Two Business days of the client's signature.** (does not include Saturday, Sunday or other legal holidays.)
- b) Sooner if the terms of the contract necessitate quicker delivery than two business days.

All funds or moneys received for any reason pertaining to the sale, renting, leasing, optioning of real estate or business opportunities, contract or mortgage collections or advance fees shall be deposited in the firm's real estate trust bank account **not later than the next banking day following receipt** thereof; except:

- (a) Cash must be deposited in the firm's trust account not later than the next banking day;

(b) Checks received as earnest money deposits when the earnest money agreement states that a check is to be held for a specified length of time or until the occurrence of a specific event; and

(c) For purposes of this section, Saturday, Sunday, or other state legal holidays.

Document, document, document ... with a receipt in the files for all brokers in the transactions.

### **Receipts and Source of Funds**

All checks, funds or moneys received shall be identified by the date received and by the amount, source and purpose on either a cash receipts journal or duplicate receipt retained as a permanent record.

All deposits to the trust bank account shall be identified by the source of funds and transaction to which it applies.

### **Client Ledger and Deposits**

The designated broker is required to keep accurate trust account records. An individual client's ledger sheet shall be established and maintained for each client for whom funds are received in trust, which shows all receipts and disbursements. The firm will maintain the minimum amount required by the financial institution in the trust account to prevent the trust account from being closed. A ledger sheet identified as "opening account" will be required for funds that are used to open the account or to keep the trust account from being closed. The credit entries must show the date of deposit, amount of deposit, and item covered including, but not limited to "earnest money deposit," "down payment," "rent," "damage deposit," "rent deposit," "interest," or "advance fee." The debit entries must show the date of the check, check number, amount of the check, name of payee and item covered. The "item covered" entry may indicate a code number per chart of accounts, or may be documented by entry in a cash receipts journal, cash disbursements journal, or check voucher.

The reconciled real estate trust bank account balance must be equal at all times to the outstanding trust liability to clients and the funds in the "open account" ledger. The balance shown in the check register or bank control account must equal the total liability to clients and the "open account" ledger.

The designated broker shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account check register or bank control account. The checkbook balance, the bank reconciliation and the client ledgers (including the "open account" ledger) must be in agreement at all times. A trial balance is a listing of all client ledgers, including the "open account" ledger, showing the owner name or control number, date of last entry to the ledger and the ledger balance.

### **Digital Records**

The provisions of this chapter are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back up all data files.

(b) Receipt, check or disbursement registers or journals, bank reconciliations, and monthly trial balances will be maintained and available for immediate retrieval or printing upon demand of the department.

(c) The designated broker will maintain a dated source document file or index file to support any changes to existing accounting records.

### **Trust Funds over \$10,000**

The broker shall disclose in writing to a party depositing more than \$10,000 that the party has an option to deposit those funds in a separate interest bearing trust account for the particular party or deposited in the pooled interest-bearing account if the parties agree in writing.

### **Disbursements of Trust Funds**

All disbursements of trust funds shall be made by check, or electronic transfer, drawn on the real estate trust bank account and identified thereon to a specific real estate or business opportunity transaction, or collection/management agreement. The number of each check, amount, date, payee, items covered and the specific client's ledger sheet debited must be shown on the check stub or check register and all data must agree exactly with the check as written. No check numbers on any single trust account can be duplicated.

(a) No disbursement from the trust account shall be made based upon wire transfer receipts until the deposit has been verified.

(b) The designated broker must provide a follow-up "hard-copy" debit memo when funds are disbursed via wire transfer.

(c) The designated broker shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

### **Cooperating Broker Commissions**

Commissions owed to another firm may be paid from the real estate trust bank account. Those commissions shall be paid promptly upon receipt of funds. Commissions shared with another firm are a reduction of the gross commissions received.

### **Funds in the Account must be Trust Funds**

No deposits to the real estate trust bank account shall be made of funds:

(a) That belong to the designated broker or the real estate firm, except that a designated broker may deposit a minimal amount to open the trust bank account or maintain a minimal amount to keep the account from being closed; or

(b) That do not pertain to a client's real estate or business opportunity sales transaction or are not received in connection with a client's rental, contract or mortgage collection account.

### **Disbursements**

No disbursements from the real estate trust bank account shall be made:

(a) For items not pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account;

(b) Pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account in excess of the actual amount held in the real estate trust bank account in connection with that transaction or collection account;

(c) In payment of a commission owed to any person licensed to the firm or in payment of any business expense of the firm. Payment of commissions to persons licensed to the firm or of any business expense of the designated broker or firm shall be paid from the regular business bank account of the firm.

(d) For bank charges of any nature, including bank services, checks or other items, except as specified in WAC [308-124E-110](#) (1)(a) and (d). Bank charges are business overhead expenses of the real estate firm. Arrangements must be made with the bank to have any such charges applicable to the real estate trust bank account charged to the regular business bank account, or to provide a separate monthly statement of bank charges so that they may be paid from the firm's business bank account.

### **Closing Statements**

The real estate licensee is responsible to furnish a detailed closing statement to each client in real estate and business opportunity transactions at the time the transaction is closed. The firm must retain a copy of all closing statements even though a closing agent handled the closing and funds.

The closing statement should show:

The date of closing

The total purchase price

An itemization of all adjustments,

Money or things of value received or paid

Dates of adjustments including names of payees, maker and assignees of any notes made or assumed.

The net proceeds of a real estate transaction are to be paid directly to the seller unless otherwise provided by written agreement.

When there is more than one licensee involved and funds are deposited by the purchaser prior to the closing, the firm first receiving such funds shall retain custody and be accountable until such funds are distributed or delivered in accordance with written instructions signed by all parties to the transaction.

*A firm may have a trust account holding the buyer's earnest money. The firm retains custody until written instructions say otherwise.*

## Auditing a Real Estate Firm

The DOL conducts routine audits on a regular schedule, and may conduct special audits in response to customer complaints or other priorities. The firm must keep records for at least **3** years. All records must be available to the auditor at the license location upon request.

### **During an audit, the auditor will:**

- Review the law about controlling interest in a real estate business with the designated broker or representative.
- Observe business signage and advertising, including, but not limited to letterhead, business cards, and promotional items.
- Examine the licenses of the firm, designated managing broker, managing brokers, and brokers to verify:
  - The licenses are current and up to date.
  - The licenses are available to the public.
  - The license names are used properly.
- Verify that the firm's Master Business License and Uniform Business Identifier (UBI) numbers match the DOL license.
- Verify controlling interest in the firm.
- Verify all assumed (DBA) names.
- Review the firm's written policy/procedures manual and delegations of authority.
- Confirm that any civil or criminal actions have they been reported to the Department of Licensing (DOL).
- Determine if the office is a main office, a branch, or the only office for the firm.
- Determine where branch office records are kept.
- Review brokerage transaction files within the last 3 years, including:
  - Log files
  - Listing agreements
  - Closed and pending purchase and sale contracts, including addenda special agreements and attachments
  - Failed sales
  - Relationship disclosures for dual agency
  - Mutual agreement dates
  - Closing statements
  - Earnest money receipts (delivery of earnest money) for both listing and sales files
  - All other documents and correspondence related to transactions
  - Reviews of brokerage service contracts involving any affiliated licensee with less than 2 years' experience.
- Review and reconcile brokerage trust accounts, including owners, tenants, associations, and earnest money accounts. The auditor will generally examine bank records for all trust accounts for the 3 months before the audit. However, he or she may request up to 3 years of records if necessary. The audit may review the following records:
  - Bank statements
  - Pre-numbered check stock
  - Canceled checks (back and front)
  - Deposit slips (receipted by bank)
  - Wire transfer confirmations

Voided checks (defaced)

Check registers or other records of receipts and disbursements.

Brokerage trust account reconciliations.

Property Management trust accounts corresponding invoices or receipts (to verify actual expenses).

Ledgers (liabilities)

- Examine a sample of management agreements to verify agreements are signed by both the designated managing broker and the property owner.
- Review current brokerage (firm) to owner property management agreements to make sure they comply with state laws and rules.
- Examine a sample of leases or rental agreements, and compare the security deposit liability in the lease/rental agreement to the liability in the security trust account.
- Review current tenant leases for compliance with state laws and rules.

### **What happens after the audit**

- 1) The auditor will prepare a written report to be signed by the designated managing broker or their representative.
- 2) The auditor will deliver the report to the audit manager, who will determine if more documentation or clarification is needed.
- 3) The audit manager decides what action to take. He or she may decide to:
  - a) Take no further action.
  - b) Send a letter asking for more information or documentation.
  - c) Send a letter asking for compliance.
  - d) Refer the report to our legal staff for a disciplinary action or fine.
- 4) If the auditor found minor irregularities, and the designated managing broker agrees to come into compliance, the audit will be filed.
- 5) If the audit is referred for legal action, the DOL will contact the broker with the results when the audit investigation is complete and has been reviewed by the legal staff.

### **If the audit finds problems**

The designated broker should immediately start correcting any problems found in the audit.

- If the audit finds overages or shortages in trust accounts, the designated broker should identify the source of the overage or shortage and immediately take corrective action.
- If the designated broker disagrees with the auditor's finding, he or she should contact the audit manager to request further review.

## **Investigation Insights**

Auditing recommendations from the June 2016 Department of Licensing meeting.

### **Make sure you keep your Earnest Money Receipts**

When a purchase and sale agreement states that the buyer will deliver earnest money to the closing agent, BOTH the listing firm and the selling firm are required to have a receipt of delivery from whoever is holding the funds.

Also, it is the responsibility of the firm and brokers to provide a receipt to ALL parties when they receive funds or deliver funds. A receipt must have the date the funds were received, the amount, the source, and a purpose for the funds.

Failure to obtain a receipt of delivery for earnest money may result in a complaint, investigation and formal charges.

Keep Good Records!

RCW 18.85.041, RCW 18.85.201, RCW 18.85.231, RCW 18.85.275, WAC 308.124C-105, WAC 308-124E-105

## **Property Management Monthly Reconciliation,**

When providing property management service, the designated broker and the firm are responsible for preparing a monthly reconciliation of funds being held in trust. This reconciliation must include:

- The Client's ledger (s)
- Bank Statements,
- Trust Account Check Register

The reconciliation should show that all three reports are in balance and in agreement at all times. Don't become a statistic! Over the past year, our office has noticed that many firms are failing to reconcile balances and ensure consumer funds are maintained and available.

RCW 18.85.041, WAC 308-124C-105, WAC 308-124E-105, WAC 308-124E-115

## **Keep a clear and accurate transaction log**

Firms need to maintain a transaction log of all real estate brokerage services. That mean everything! The Dept of Licensing does not dictate style, so the transaction log can be kept in any manner that clearly identifies all real estate brokerage services for brokers at the firm. Make sure you understand the services you're performing. Firms and brokers often confuse what is identified as brokerage services.

Brokerage services include and is not limited to:

- Brokers Price Opinions (BPO)
- Failed Sales
- Agreements signed by only one party
- Rejected offers
- Listings
- Purchase and sales agreements
- Leases
- Business opportunities.

That is a number of things to remember. When in doubt .. document, document document... and retain those documents. Firms are required to maintain transaction logs for a period of a minimum of 3 years.

RCW 18.85.011, WAC 308-124C-105, WAC 308-124C-110

## **Keep your Correspondence,**

Maintaining good records is part of the real estate business. Correspondence should be a part of these records.

Correspondence includes and is not limited to:

- Emails
- Text messages
- Faxes
- Instant messages
- Social media discussions.

Correspondence is pretty much any written instructions that are pertinent to a real estate transaction. Firms and brokers must keep all correspondence within the FIRM's transaction folder. So, be aware, if you're providing real estate brokerage services by submitting offers, receiving and giving information and responding to sellers, banks, and lending institutions, even social media, print it out and pop it in the transaction folder.

WAC 308-124C-105

## **Understand Earnest Money**

Most purchase and sale agreements containing provisions identifying when, where, and to whom earnest money goes. To help business move quicker, it is common for the buyer's agents to "copy" the earnest money check and include with the offer. A listing agent would then present that check copy to the seller and the transaction would proceed from there. Fortunately, there are some problems with this common practice.

First, if the buyer's agent isn't clear with the listing agent or seller that they are not in physical possession of the actual earnest money check, the broker and firm may be subject to an investigation and possible sanctions.

Second, the listing agents should be extra cautious when accepting copies of earnest money checks and determine if the buyer's agent of firm is in physical control of the check. If this can't be determined, the listing agent should make very clear to their client that nobody has verified physical control of the check.

Finally, if the buyer's broker has control of the check they must deliver it with whomever is indicated on the purchase and sales agreement. The selling firm should have a receipt when they accept the earnest money check, and a second receipt when they deliver the check to the closing agent.

## Real Estate Commissions

All commissions or fees paid on a transaction or brokerage services for an affiliated broker, must be paid to the firm. These monies are then disbursed to the affiliated broker.

In the case of a broker or managing broker, the acceptance of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate firm with whom the broker or managing broker is licensed would be a violation of License Law.

A broker cannot charge or accept compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction.

*For example, a bank hires a real estate broker to put together a report on the market value of a property that they intend to eventually list with the broker. The bank is willing to pay the broker \$150 to complete the report. The money for the report must be paid to the firm.*

*An affiliated broker under a firm sells a \$400,000 home to a buyer. The transaction proceeds and closes on the date as agreed in the contract. The affiliated broker sends to escrow a commission disbursement form that shows that the firm is to be paid 20% of the selling office commission of \$12,000 commission. The balance of the commission, \$9500, is paid directly to the affiliated broker directly from escrow according to the instructions sent to escrow. But, in fact, all commissions are to be paid to the firm.*

### How to compute Commission and Sales Price

There are rare occasions when a broker is asked to compute the list price when a seller determines the desired net amount from the sale. A net listing is where the seller tells the agent the bottom line dollars the seller wants to receive.

To compute the figures for this type of situation, remember the "T Method." The amount that the seller is to net is only a part of the total paid out on the transaction. If you want to find out how much the property is listed for, you will need the commission rate and the seller's net.

Seller's Net (How much the seller gets. Add any costs)

Seller's Total Listing Price

Commission Rate

(The commission is 6% but in this case the total Seller's Net is 94% of the list price..)

## Examples:

### Mack sells his lot

Mack Seller owns a 5 acre parcel of land. He has owned it for most of his life. Because, it has been determined that wetlands cover much of the property so that only possibly one house can be built. He has tried to get the property sold in the past and is tired of the challenge. He lists the property with Owen Broker. Mack Seller says that he would ideally like to walk away with \$200,000 for the land after paying a 5% commission and the closing costs of \$12,000. How much is the listing price of the property so that Mack Seller gets \$200,000? \_\_\_\_\_

To solve this problem...

You have the Net (\$200,000) which is a "part" of the total and you are solving for the Total.

You need to add the costs to the net (\$200,000 plus \$12,000= \$212,000)

The commission... is 95% of the Seller's Total List price.

\$200,000 +\$12,000

\$\_\_\_\_\_ divided by 95%

\$212,000 divided by .95 = 223,158

### Tillie Sells Her Home

Tillie had a modest house that she listed with Brian Broker. They agreed on a 6% commission. She received a check for \$200,000. What was the sales price of the house? \_\_\_\_\_

\$200,000 divided by .94% equals the total sales price of the house of \$212,766.

## Fraud in Transactions

When a person conduct results in the act of misleading, lying or misrepresenting facts it is considered "fraud." Fraud does occur in many real estate transactions but not all fraud results in a court case or prosecution.

For example, there are local and state laws regarding speed limits on the roads. Not all of the people who have a heavy foot on the accelerator get speeding tickets. It doesn't mean they didn't commit a violation of the law. It could even be a very serious violation, but we don't live in a police state. Fraud, even if not detected, is still fraud. And, it isn't always the worse offenders that are caught.

Examples of fraud include, but are not limited to:

A seller who does not disclose serious material defects to the buyer of the property.

A buyer who does not present current true IRS tax filings to the lender.

An investor who purchases a home applying for an owner occupied loan when it is going to be a rental.

A listing agent who does not disclose a known defect about the property that he/she listed.

A material fact is information that material impairs or defeats the purpose of the transaction. Material facts affect whether a buyer would purchase, sell, or rent a property.

Misrepresentation is misstating or withholding information in order to get another person to act in a certain way.

When a buyer fills out a loan application, they are signing a federal form. They buyer is often committing fraud if the information on that form is not truthful.

**Next Step ... Go to the Workbook and Final and complete Quizzes, Exam, and the Mandatory Evaluation.**