Current Issues

Core Curriculum 2018-2019

Required course for all Washington State Licensees

By Natalie Danielson

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

Please Read this First! Thanks!

PROFESSIONAL Direction INC

Clockhours by Mail

1. You will be provided with a booklet of with the class material here in a pdf format.

2. The course has been divided up into sessions. In Washington State a "clock hour" is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.

3. ***Answer*** the questions on the quiz sheet.

4. If you have any questions regarding the material or the questions, don't hesitate to email Natalie Danielson.

5. ***Email*** Quiz and Evaluation to Professional Direction. clockhours@gmail.com

6. The certificate will be emailed ASAP after receipt of quiz and evaluation. If you are desperate… just email us!!!!

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

Thanks! *Natalie Danielson*

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Curriculum

Session Hours	Major Topics	Objective
1 **15 min**	**Legislative Update**	**National Legislative Issues** a. Marriage Equality & Real estate b. Counseling and Incentives to reduce Mortgage insurance c. VA Housing History, inspection fees and proposed rehab loans **Washington State Legislative Issues**
2 **30**	**Legal Update**	**Consumer complaints, investigations/ Findings** Failure to present all offers Failure to maintain a complete transaction Log Lake of written delegation **Case studies** Seller Disclosure Unauthorized practices of Law Consumer Protection Act **Business Email Compromise… Wire Fraud** This is happening every day especially in Real Estate!
3 **20 min**	**Organizational Structures, Roles, and Responsibilities**	**Teams** **Independent Contractor** **Broker Safety**
4 **30 min**	**Real Estate Practices**	**Love letters** **Multiple offers** **Builder Contracts** **Professional Cooperation**
5 **30 min**	**Risk Avoidance**	**Flood Insurance** **Dual Agency** **Third party vendor referrals** **Signatory Authority**
6 **30 min**	**Real Estate Advertising**	**Online Renewal** **License law requirements** **Third party websites**
7 **15 min**	**Discussion and wrap-up**	

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By Natalie Danielson

The Core Curriculum Current Issues is a required course for every real estate broker renewal every two years. The curriculum is decided by the Department of Licensing with updated material every two years.

This class focuses on major sections that were determined to have an impact on the business of the real estate agent and the consumer.

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

Course Objectives

As a result of taking this course the real estate licensee will be able to:

- Identify the latest legislative and legal issues affecting the industry.
- Learn from the actions that disciplinary identified as most common violations
- Identify issues with teams, independent contractor status, broker safety
- Know the new renewal process online
- Know the issues revolving around "love letters," multiple offers, builder contracts and professional cooperation
- Learn to identify risk situations regarding flood insurance, dual agency, vendor referrals and signatory authority
- Know the license law requirements and the Dept of Licensing guidelines regarding real estate advertising.

1. Legislative Updates

National Legislative Issues

A. Marriage Equality and Real Estate

In 2015 the Obergerfel v.Hodges Supreme Court case required all states to issue marriage licenses to same sex couples and to recognize same sex marriages validly performed in other jurisdictions. This legalized same-sex marriage throughout the U.S. It is a landmark civil rights case in which the US Supreme Court ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the 14th Amendment to the US Constitution.

The way that property is titled and the tax consequences affects ownership and sales. When purchasing a home, married spouses, including same-sex marriages, may have an automatic right of survivorship with limitations including prenuptial agreements. This can affect estate planning as married couples have priority to serve as personal representative, guardian, or conservator of their spouse. The surviving spouse may have the right to inherit and to provide for the spouse through community property rights where applicable.

Any of these issues are beyond the scope of the agent. It is advisable to suggest that all clients seek the advice of legal and tax experts when purchasing or selling real property.

B. Counseling and Incentives

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

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

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

Hud created home buyer education that can benefit homebuyers to understand the process and to also add incentives to complete the education. These are available through lenders.

https://www.huduser.gov/portal/periodicals/em/spring16/highlight2.html

C. VA (Veterans Administration) Housing

In 1944 the federal government established the VA home Loan program.
Since November 2014, the VA has allowed veterans to negotiate the payment of wood destroying inset inspection fees in select southern and western states including Washington State.
The housing industry is proposing legislation to introduce VA rehab loans similar to FHA 203K programs on a Federal level.

Washington State Legislative Issues

A. Buildable lands and Homeless funding

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

B. Excise Tax Bill Did NOT pass

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

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

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

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

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

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

What does the law do?

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

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

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

What wells are impacted by this law?

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

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

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

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

Watersheds that previously adopted plans

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

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

Watershed without previously adopted plans

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

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

What counts as a permit exempt use of groundwater?

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

Groundwater permit exemption

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

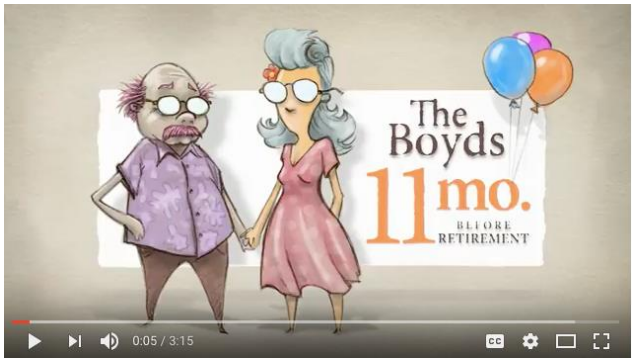
- Domestic uses of less than 5,000 gallons per day
- Industrial uses of less than 5,000 gallons per day
- Irrigation of a lawn or non-commercial garden, a half-acre or less in size
- Stock water

Fees associated with the legislation.

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

Land owners and the Hirst Decision

There is a lot of confusion around the impacts of the recent Hirst Decision and we also understand how it's impacting many property owners throughout the state. Washington REALTORS® put together a video for your information and for you to share with property owners. It explains what the Hirst Decision is, how it impacts many property owners' ability to obtain permits, and what Lawmakers are doing to fix it in Olympia. The video was created before the new legislation in 2018.
https://youtu.be/cVM4Us-JAsw



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

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

2. Legal Update

1. Common Consumer Complaints Received by Dept of Licensing

A. Present All Written Offers

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

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

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

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

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

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

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

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

Often there is a date chosen to present all offers to the seller. An offer may have an expiration date prior to that date. If seller is unavailable or refuses to review an offer prior to expiration, then listing broker's file should reflect those circumstances. Even if seller set an offer review date in the future, broker must notify seller if an offer comes in from a buyer with an expiration date prior to seller's established review date. Seller must be informed that an offer will expire, and thus be void, before the pre-determined offer review date. It is always up to seller whether seller will review an offer earlier than the review date listed.

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

Definition of "a timely manner?"

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

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

Moreover, all offers must be presented timely. What "timely" means depends upon the circumstances at issue. Certainly, "timely" requires presentation before the offer expires, unless it is impossible to present the offer prior to expiration.
Similarly, absent a seller's instruction, it is not appropriate to delay presentation of an offer while listing broker hopes for additional offers to be presented, including offers from listing broker's buyer. If listing broker believes that delayed presentation of an offer is beneficial to seller, listing broker must advise seller of the circumstances and adhere to seller's subsequent instruction. If seller instructs delay, broker should document that instruction, in writing, in broker's transaction file.

Offer Accepted

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

B. Maintain a complete transaction log

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

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

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

C. Have written delegation of duties

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

The Designated broker of a firm can delegate certain responsibilities to managing brokers. Duties of a designated broker cannot be delegated to brokers, but only to those with a managing brokers license.
Real estate license law requires that all delegations of authority be in writing from designated broker to a managing broker. While designated brokers are able to delegate many duties to a managing broker, the delegation of authority is not complete unless and until it is put into writing, signed by both the designated broker and the managing broker. Oral delegations of authority do not successfully delegate authority and do not hold up under an audit.

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

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

- Safe handling of client funds which includes the receipt of earnest money
- Maintenance of trust accounts for real estate sales and property management
- Transaction and trust account recordkeeping can be delegated to a managing broker for a team
- Supervision of brokers within the firm. An example can be a managing broker supervising a broker licensed less than 2 years.

2. Three Legal Cases to Discuss

Douglas v. Visser.

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

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

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

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

But before a buyer has any remedy, he or she will have to prove diligence in light of the information that was provided. It is the buyer's burden to prove diligence, not the seller's burden to prove a lack of diligence. A buyer should assume that there is no real remedy for any misrepresentations by the seller. The buyer has a duty to follow up on every defect that is found and every uncertainty about the property. If the buyer could have discovered the truth with diligence, the buyer will have no claim.

The Property Information Disclosure form is "Not considered part of any written agreement between the buyer and the seller of residential property." The disclosure form is for disclosure only. Brokers have the duty to disclose all material facts actually known by the broker according to the Law of Agency.

The disclosure law also restricts the seller's liability. "The seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor." RCW 64.06.050(1)

Cultrum v Heritage House Realtors 1985

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

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

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

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

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

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

The Court also noted that the standard of care necessary for completing such forms and their addenda was that of a practicing attorney. The court addressed Ramey's failure to include a subjective right in the contingency clause contained in the second addendum regarding a satisfactory inspection. It stated that "an attorney is liable for all losses caused by his or her failure to follow the explicit instructions of the client." It also noted that "when a broker undertakes to

practice law and prepares a contract at variance with the client's instructions, he or she is liable for negligence." The court held that because Ramey was practicing law and failed to comply with Cultom's wishes, she was liable for all damages caused by her negligence. Thus, the court affirmed the award of $178 in lost interest.

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

Edmonds v John L Scott

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

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

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

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

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

Disbursement of the earnest money without a written release is permitted only when the agreement terminates according to its own terms. An agreement terminates by its own terms only upon the happening of an event specifically identified in the agreement as one that will cause such termination. Edmonds' earnest money agreement enumerates the circumstances under which the agreement automatically terminates. None of those enumerated circumstances

encompasses the events leading to Edmonds' decision not to close. The agreement did not terminate by its own terms. Instead, there was an actual dispute as to Edmonds' entitlement to the funds.

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

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

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

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

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

3. Business Email Compromise / Wire Fraud

According to the FBI, the Internet Crime Complaint Center saw a 480 percent increase in the number of complaints filed last year by those in the real estate industry. Most of these complaints were related to wire fraud, a scam becoming more common in the real estate industry.

Washington State is listed in the top ten list on the Internet Crime Center 2016 report for the reported number of victims and the reported number of losses due to Internet Crime. In 2016 there were 6874 victims in our state compared to California with over 39,000 victims. But, the numbers of victims in Washington are substantial compared to the rest of the country. The loss per victim in Washington state is $725,638,734. The number of victims is not nearly as high as all kinds of other internet crimes like the advance fee fraud, phishing and non payment or non-delivery. But, the monetary losses are exorbitantly high. The next highest reported monetary losses are from Confidence Fraud/Romance and non-payment/non-delivery.

This past June, news broke that a real estate phishing scam cost a New York State Supreme Court judge over $1 million.

Business Email Compromise/Email Account Compromise leads all the other types of internet crime with reported monetary losses over $360 million dollars. BEC is a scam targeting businesses (not individuals) working with foreign suppliers and/or businesses regularly performing wire transfer payments. EAC is a similar scam which targets individuals. These sophisticated scams are carried out by fraudsters compromising email accounts through social engineering or computer intrusion techniques to conduct unauthorized transfer of funds. Most victims report using wire transfers as a common method of transferring funds for business purposes; however, some victims report using checks as a common method of payment; The fraudsters will use the method most commonly associated with their victim's normal business practices.

In real estate, victims are often the buyer of a property. An email account with the real estate agent or escrow has been compromised. When it comes time to wire funds for closing, the scammer creates a ghost account and sends wiring instructions that are different than the escrow instructions. Once the buyer emails the funds, they are lost and gone off to most likely another country.

According to Law.com, "Earlier this month, the FBI told the Washington Post that in 2017, cyber criminals stole or attempted to steal almost $1 billion from real estate purchase transactions. That figure is up from $19 million in 2016, which makes wire fraud the fastest growing real estate cybercrime in the U.S."

"As with any other target for cyber criminals, if there is an opportunity to profit, the criminals will come. That said, there are likely three reasons real estate is attractive to cyber criminals. One, because of the diversity of targets. Second, because they prey on unknowing home buyers who don't know how to spot a scam, and three, because of the amounts involved–it is not uncommon for buyers to wire transfers for hundreds of thousands of dollars."

Prevent yourself from becoming a victim. There are two primary victims. They include the hacked email account holder and the buyer who emailed the funds. Maker sure that the buyer emailing funds is aware of the scam. Be in touch with escrow through known channels. Use the contact information given at the beginning of the transaction. Beware of any changed phone numbers or email accounts. For example, if there is a request to transfer funds that comes to the buyer from escrow using a Yahoo or Gmail account, it is a pretty sure guess that the email is a ghost one. Real Estate agents and transaction coordinators show beware clicking on an unknown link.

3. Organization Structures, Roles, and Responsibilities

A. "Teams"

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

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

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

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

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

According to RCW 18.85.011, the definition of real estate brokerage services means:
Any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation, or by a licensee on the licensee's own behalf:

(a) Listing, selling, purchasing, exchanging, optioning, leasing, renting of real estate, or any real property interest therein; or any interest in a cooperative;
(b) Negotiating or offering to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate, or any real property interest therein; or any interest in a cooperative;
(c) Listing, selling, purchasing, exchanging, optioning, leasing, renting, or negotiating the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, lease, exchange, or rental of the land upon which the manufactured or mobile home is or will be located;
(d) Advertising or holding oneself out to the public by any solicitation or representation that one is engaged in real estate brokerage services;
(e) Advising, counseling, or consulting buyers, sellers, landlords, or tenants in connection with a real estate transaction;
(f) Issuing a broker's price opinion. For the purposes of this chapter, "broker's price opinion" means an oral or written report of property value that is prepared by a licensee under this chapter and is not an appraisal as defined in RCW 18.140.010 unless it complies with the requirements established under chapter 18.140 RCW;

(g) Collecting, holding, or disbursing funds in connection with the negotiating, listing, selling, purchasing, exchanging, optioning, leasing, or renting of real estate or any real property interest; and

(h) Performing property management services, which includes with no limitation: Marketing; leasing; renting; the physical, administrative, or financial maintenance of real property; or the supervision of such actions.

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

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

Unlicensed Assistants MAY:

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

Unlicensed Assistants MAY NOT

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

b. The Licensee's Status as Independent Contractor

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

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

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

C. Broker Safety

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

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

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

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

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

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

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

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

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

D. DOL Online Renewal and License Maintenance Features

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

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

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

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

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

4. Residential Real Estate Practices

A. Introductory Letters ("Love Letters")

A poem, photo collage or a love letter can be included with a real estate offer from a buyer trying to "promote" his or her offer to the sellers. As the real estate market continues to heat up, buyers may be competing with other offers that may be higher. Writing a personal letter to appeal to the seller 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 may have nothing to do with the purchase and sale agreement. There are articles all over the internet, samples of letters, and even templates encouraging and instructing buyers to write letters.

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. Homeowners 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 single man, 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.

Are the letters discriminatory? Consider how often a real estate agent would encourage buyers that originate from another country, are disabled, have misunderstood religious beliefs, is LBGT? Everyone, regardless of their background, beliefs, health/disability, has the right to purchase a home in the area chosen. 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.

Do the sellers have the "right" to sell their house to whomever they choose? When you buy real estate, you get a bundle of rights and a huge bag of restrictions. You may be restricted from painting your house purple, having bedrooms with no windows, practicing your drums in the backyard after midnight, adding a third floor, and more. There are federal, state and local laws that include zoning, fire codes, building codes, homeowners associations and city noise ordinances. The seller does NOT have the right to discrimination in the sale of the house. The seller is not the one to determine if there is a discrimination issue in play, either.

Let's say the seller and the real estate broker sit at the dining room table reading the "love letters" and they choose the buyers based on, for example, the fact that they are married with children. They assume that no one will find out. It is still a federal crime. If a buyer files a discrimination lawsuit against the seller and the real estate agent, the fines can start at $10,000 and the real estate agent and the seller would be required to tell the truth under oath. Real estate

agents are bound by federal state and local discrimination laws and cannot discriminate. The real estate agent is also bound under License Law to not discriminate and could be subject to disciplinary action. Saying a victim is "wrong" and there was no discrimination can't be your only defense!

If you speed down the road thinking you won't be caught, you still are violating a law. Unknown to you there might be radar, a curve you missed or a pedestrian that took a picture of your license plate. You are still violating a law whether you get caught or not.

The seller of the property is best to "*Choose the Paper… not the People*" when signing a purchase and sale agreement. Choose the offer on the property based on the terms of the contract and not the family, color, race, age, orientation, etc of the buyers. Do not open up the door to a discrimination complaint.

Washington Discrimination Law

Washington State Law in RCW 49.60 prohibits discrimination regarding the following protected classes include:

Race	National Origin	Age
Creed	Sexual orientation	Disability**
Color	Sex	Service Dog
	Marital Status	

* presence or any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person.
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.

Local Discrimination laws

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

Seattle Anti Discrimination Laws

Illegal discrimination is when:

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

Seattle currently includes these protected classes:

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

*Not applicable to Employment or Fair Contracting cases **Not applicable to Public Accommodations cases

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

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 against because she is single and a woman. 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 broker said, "Your 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 what their background.

B. Multiple Offer Scenarios

In an active market like most of the state is experiencing with limited inventory, a well priced house for sale can generate more than one offer. There are no laws or rules that are written that specifically deal with multiple offer situations. The law does state:

"All offers must be presented to the seller in a timely manner."

This issue of presenting offers has been discussed on previous pages. All offers must be presented to the seller.

The seller then can evaluate the offer based on the price offered, the buyer's ability to close based on the lender's letter and the terms that must be acceptable. The real estate listing agent needs to focus on those issues. The real estate agent is not an attorney nor a lender. Determining one buyer is more qualified than the next based on factors including the money down could be very misleading because a buyer who is well qualified might choose to put less down while a buyer with questionable credit may be required to put more down by the lender. Choosing one buyer over another based on how well they might "fit" in the neighborhood is a discriminatory practice.
It is important to stick with the MLS forms when preparing and presenting purchase and sale agreements. Avoid attempting to write contracts on the blank

addendum or you could be in the world of the unauthorized practice of law.

A counter offer is a new offer. Avoid countering two offers at once with "a race to the finish" ending. The house could be sold twice. The seller can accept another offer in a backup position subject to the failure of the first offer.

In an active market a seller can often have more than one offer. There are no laws or rules from the Department of Licensing that specifically deal with multiple offers. Many MLS' and real estate firms have created forms to deal with multiple offers.

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

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

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

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

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

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

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

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

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

C. Builder Contracts

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

D. Professional Cooperation

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

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

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

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

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

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

The type of complaints can include:

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

5. Risk Avoidance Guidelines

A. Flood Insurance

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

B. Disclosure and Dual Agency Relationships

Under the amended Law of Agency RCW 18.86.020 it states:

> "A broker who performs real estate brokerage services for a buyer is a buyer's agent unless the: . . . (c) Broker's firm has appointed broker to represent the seller pursuant to a written agency agreement between the firm and the seller (listing agreement), 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 . . .."It must be in writing with terms of compensation after giving the parties a copy of the Agency Law Pamphlet.

This language requires an agreement between the firm and the parties and that the firm has appointed the broker as agent for both parties.
Contact your Designated Broker or Branch Manager with questions on how to best comply with this statute when working as a dual agent.

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

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

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

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

There are times that a real estate agent with a good-hearted attempt wants to help a client but the sale is beyond the knowledge level of the agent. It is important to acknowledge and recognize our own level of expertise and refer clients to others that can better serve the needs of the clients. A real estate agent

cannot know everything! If you are primarily working in the city selling condominiums, it may not be wise to head to sell a farm in Skagit County. Or, if you live and work in Vancouver, WA, it may not be wise to sell a property on Lake Washington Waterfront.

D. Signatory Authority for Clients

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

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

6. Real Estate Advertising

A. Licensing Law Requirements and Social Media

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

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

(1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.

(2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:

(a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.

(b) Not use a name, title, or brand which suggests a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."

(c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."

(d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

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

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

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

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

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

Advertising Guidelines available from Dept of Licensing

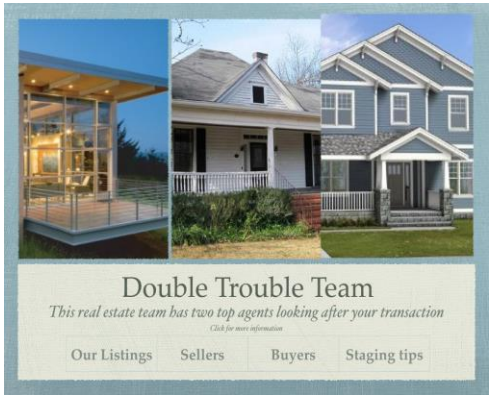
The Department of Licensing has created an Advertising Guidelines booklet for real estate brokers. It is available at.
http://www.dol.wa.gov/business/realestate/docs/620400.pdf

B. Third-Party Websites

One Click Away

Real estate brokers have to hang their license with a designated broker of a licensed real estate firm. Licensing law says that a broker must disclose the firm in a clear and conspicuous manner on all advertising. The guidelines from the Dept. of Licensing state that this disclosure must be within "**one click**" on any webpage. Brokers are making it difficult for a consumer and the Dept. of Licensing to find what firm they are licensed with. How about your signs? Is the firm name obvious?

Take a look at your signs, websites, cards, and any advertising medium. Can the consumer easily recognize the firm name and the broker name as licensed? *When a consumer clicks from a link on a site… Lets say maybe from … Zillow, Facebook, or Twitter…. The information that is given must be accurate. There must be full disclosure of licensee status. What is missing from this website?*



Quiz for Core Curriculum 2018-2019

Complete answers on this form. Mail or scan to Professional Direction with Evaluation

1. Same sex marriage partners may have automatic right of survivorship unless there is another agreement in place. True / False

2. The way two people as partners take title can have tax consequences. True / False

3. The CFPB survey found that only 25% of borrowers submitted an application for a loan to only one lender. True / False

4. Home buyer education has shown to improve buyer's financial decision making. True / False

5. There is a $40 surcharge on transactions at closing until the year 2019 for local housing assistance. True / False

6. The Hirst decision potentially affects all developable land served by a well. True / False

7. A listing agent receives 5 offers from buyer's agents but shows the seller only the best offer. This is a legal practice. True / False

8. A listing agent receives a poorly written offer and holds it from seller for 3 days hoping a higher offer will surface. This is a legal practice. True / False

9. A buyer's agent emails an offer. Seller chooses another offer. It's a best practice to notify the buyer's agent offer is not accepted. True / False

10. Seller accepted a valid offer. Three days later a buyer writes an offer. The listing agent is not required to present second offer. True / False

11. The offer expiration date is Saturday. Seller is to review offers on Tuesday. If seller is able, the listing agent must present prior to expiration date. True / False

12. All new agents licensed less than 2 years must have supervision. This can be delegated to an experienced broker. True / False

13. A team is required by law to always have a managing broker in charge. True / False

14. The designated broker is the only one who can delegate responsibilities to a managing broker. True / False

15. A managing broker can be delegated the responsibility to maintain transaction record keeping. True / False

16. If a managing broker is delegated a duty, the designated broker no longer is liable for that responsibility. True / False

17. In the Douglas v Visser case the buyer sued the seller because the house was essentially uninhabitable. True / False

18. The recent cases demonstrate the importance for buyers to get home inspections and follow up on questionable issues. True / False

19. The Property Information Disclosure Law limits the seller's liability True / False

20. The buyers should not assume and rely on the accuracy of the information on the Property Information Disclosure form. True / False

21. Due to the Heritage House case, brokers should fill in pre-printed forms to avoid unauthorized practice of law. True / False

22. Since the Heritage House case, real estate agents can charge to fill in pre-printed forms for any client. True / False

23. When filling out a purchase and sale agreement, the real estate agent is held up to the standard of care of an attorney. True / False

24. Any disbursement of earnest money must be by written agreement. True / False

25. License law defines "teams" as a group of agents working under a managing broker. True / False

26. If a team wants to use their own name and not the firm name it must be registered with the DOL as an "assumed name." True / False

27. Two people can work together as a team without having a managing broker license between the two of them. True / False

Check the following regarding what duties an UNLICENSED assistant in a team can perform

28. Fill in the blanks on a purchase and sale agreement Yes / No
29. Record and deposit earnest money. Yes / No
30. Write and place advertising. Yes / No
31. Discuss with the seller the price a seller should list a property for sale. Yes / No
32. Negotiate a purchase and sale agreement for a buyer Yes / No

33. Renewing your real estate license is now completed online at the licensee's dashboard. True / False

34. The Dept of Licensing does not require a list of courses or certificates unless the licensee is audited. True / False

35. A buyer's "love letter" often appeals to a seller to choose the buyer because of their familial or marital status. True / False

36. Choosing a buyer based on what they write in the "Love Letter" about religion, children, or race is discriminatory. True / False

37. In a multiple offer situation, the seller can discriminate lawfully. True / False

38. A seller can reject all offers in a multiple offer situation True / False

39. A seller needs to be careful not to counter two offers simultaneously without selling the house to two parties. True / False

40. A broker must present all written offers to the seller. True / False

41. If the uses another form than the standard MLS forms, the real estate agent should encourage the buyer to see legal advice. True / False

42. Flood insurance is required by lender when the property falls in a _____ _____.

43. Dual agency must be agreed to in writing on the listing agreement and on an agreement with the buyer. True / False

44. All firms must have a written office policy about the referral of Home Inspectors. True / False

45. When a broker is dealing with a corporate owner, it is important to obtain a copy of the Articles of Incorporation. True / False

46. Before a guardian can pick up a pen to sign closing documents on the sale of a listing, there must be lender approval. True / False

47. The firm name must be visible and " _____ _____ _____" on all advertising.

48. The firm named it has licensed must be on all advertising except Internet-based advertising. True / False

49. When a client lands on an agent website, there must be full disclosure within one click from that landing page. True / False

50. A broker is responsible for keeping up to date communication to third party websites about changes to listings. True / False

You must include answer sheet or the entire quiz and the Mandatory Evaluation and return to Professional Direction with tuition to get clockhours.

Quiz for the Core Curriculum 2018-2019

You must attach the Evaluation to this Answer Sheet (or the quiz) to receive clockhours.

1		26	
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25		50	

I attest that I have read the materials and have answered the questions. The mandatory evaluation is attached!

Print Name_____**Company** _____ **Signature**_____ **Date**_____

PROFESSIONAL Direction, 13148 Holmes Pt Dr NE, Kirkland WA 98034 Email: clockhours@gmail.com

PROFESSIONAL Direction INC

Mandatory Registration and Evaluation

Did you read the material in the booklet on this date? YES / NO
Did you complete the quiz and attach answer sheet? YES / NO
Did you enclose Tuition **$15 for 3 hrs** (or part of a renewal package) YES / NO
FREE only if sent in with another online class! FREE… it must be scanned with another class! YES / NO
Did you fill out and sign this form? YES / NO
Paid by Visa/MC using secure payment options on the website. PayPal processes credit cards. YES / NO

Why did you choose to take this course? Topic? Time? Cost? Ease? Other?
A "clock hour" is 50 minutes. This 3 hour class should take about 2 hrs 30 min. How long did it take you to complete the course? _____

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

What are 3 things that you learned from the course?
1. _____ 2. _____ 3. _____

Current Issues Core Curriculum 2018-2019		
Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
Twitter name @	Email	
License Renewal Date	Date Class taken	Notes

Thanks for taking this class! I really appreciate the agents that take clockhours from my school! I am always working on my classes and writing new ones!

Professional Direction, 13148 Holmes Pt Dr NE, Kirkland, WA 98034 email: clockhours@gmail.com
www.clockhours.com