



The Legal Edge

Current Topics in Real Estate

This course includes the 2020-2021 Core Curriculum

by

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



Clockhours by Mail

1. You will be provided with a booklet of with the class material here in a pdf format. It is a 7.5 CLOCKHOUR CLASS. This class INCLUDES the 2020-2021 Core Curriculum
2. The course has been divided up into nine sections. In Washington State a “clock hour” is 50 minutes. There is a quiz at the end that can be answered as you read the material or after reading.
3. **Answer** the questions on the quiz sheet.
4. If you have any questions regarding the material or the questions, don’t hesitate to call or email Natalie Danielson.
5. **Email** Quiz and Evaluation to Professional Direction.
6. The certificate will be emailed upon receipt of course materials and handout. If you are desperate... just email us!!!!

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

Thanks! *Natalie Danielson*

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

Includes the 2020-2021 CORE

Curriculum

	Major Topics	Objective
1 60 min	Agency Duties Dual agency Buyer Agency	Agency Duties Dual Agency Buyer Agency Agreements
2 30 min	Organizational Structures, Roles, and Responsibilities	Broker Responsibilities* "Teams" Real Estate Assistants Broker Safety Online Renewal Secret Listings Professional Cooperation*
3 30 min	Legislative issues Dept of Licensing	Excise Tax changes* B& O tax increases except for Brokers* VA loans* Video and Audio Recording Online Renewal
4 60 min	Class Action Real Estate Lawsuit	Lawsuit description NAR response DOJ Investigation NWMLS compensation disclosure
5 60 min	Fair Housing and Anti Discrimination*	Federal Laws Washington Law Local Laws What it means for brokers Love letters

6 30	Disclosure Buyer Beware	Understand disclosure on Lead Paint, Mold, Carbon Monoxide, and Geologic issues Buyer Beware Referring third party vendors
7 90 min	Writing Purchase and Sale Agreements	Discuss risk of unauthorized practice of law Under the Heritage House case Current issues and changes with forms* <ul style="list-style-type: none"> a. Escalation clauses b. Evidence of funds c. Contingency Sales d. Inspection Addendum e. Inspection Response f. Closing Evidence of Funds Multiple Offers* Present all written offers*
8 30 min	Advertising and Social Media Guidelines	Requirements for advertising and social media “One Click Away” Learn about the Facebook charges of discrimination
9 30 min	Property Management	Know that brokers cannot perform property management without approval from designated broker Know that property management is a real estate activity Know the contracts and record keeping requirements and how trust funds are to be treated Identify which functions can be delegated Changes to Landlord Tenant Law*
10 30 min	Fraud in Real Estate	Know and identify red flags for fraud in real estate transactions.

*** items marked with asterisk are required Core Curriculum topics**

The Legal Edge

Current Legal Topics in Real Estate

Includes the 2020-2021 Core Curriculum

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

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

Objectives

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

1. Agency
2. Organizational Structure
3. Legislative and Dept of Licensing
4. Class action Lawsuit
5. Fair Housing and Anti-Discrimination
6. Disclosure and Buyer Beware
7. Writing Purchase and Sale Agreements
8. Advertising and Social Media
9. Property Management
10. Real Estate Fraud

Chapter 1

Agency Duties, Dual Agency, Buyer Agency

What are Your Agency Duties?

The Law of Agency created statutory duties and not fiduciary duties for brokers when dealing with their clients. A number of duties concerning the relationship of a broker to the principal; buyer or seller, landlord or tenant, are set forth in statute or law. Statutory duties allow brokers, consumers, and the courts to clearly understand an agent's role and responsibilities by listing them in the context of the Agency Law. Fiduciary duties of loyalty, confidence and trust are often hard to define so the laws more specifically identify the role and duties and agent has regarding their clients.

The agency duties as outlined in the Law of Agency

As an agent, you have specific duties that are prescribed by law.

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

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- (e) To account in a timely manner for all money and property received from or on behalf of either party;
- (f) To provide a pamphlet on the law of real estate agency in the form prescribed in the statute to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights.
- (g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

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

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

Duties of a Seller's Agent

- A. To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction.

- B. To timely disclose to the seller any conflicts of interest.

- C. To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise.

- D. Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship.

- E. Unless otherwise agreed in writing after the seller's agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that seller's agent shall not be obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

- F. A seller's agent may show alternative properties not owned by the seller to prospective buyers and may list 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 a property not listed with you and they are interested in buying that property. Do you represent them?
Yes, 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 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. So if the selling office publishes that there is no commission or the property is for sale by owner, the broker is not required to show it to the buyer.

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.

Can you list another property in the neighborhood of a listing you currently have at a better price without breaching the duty to your seller.
Yes, you can list competing properties without breaching your duty to the seller.

You have a buyer that wants to purchase a property. Just after you write up the contract, another buyer calls you and wants to write up an offer also. Can you write up the second offer?

No, you can't write two offers on a property with two different buyers. You would be breaching your duty to the first buyer. If the offer from the first buyer fails, you can write an offer from the second property.

Buyer Agency Agreements

The Law of Agency creates a presumption of buyer agency. That means that when a buyer walks into a real estate company, for example, the broker is "presumed" to represent the buyer at the time that the buyer performs "real estate brokerage services." A written agreement is not required by the law to represent the buyer. There are a number of reasons why a written agreement with the buyer can clear up any confusion especially in the area of representation and compensation.

The compensation paid to the buyer's agent has typically come from the seller's costs at closing. Though it is negotiable, the commission for the buyer is seldom negotiated by the buyer's agent. The commission amount paid to the buyer's agent will now be disclosed on the NWMLS. In some cases, there will be sellers who elect to pay the buyer's a steep discounted commission or offer no commission at all. This will require the buyer's agent to have a Buyer agreement so that commission can be negotiated by both parties.

A written agreement with a buyer:

- **Discloses the agency relationship in writing.**
It is important that the buyer clearly understand the agency relationship
- **Affirms that the agent has given the buyer a copy of the Pamphlet on the Law of Agency.**

For some reason, brokers have clients sign the pamphlet that is required to provide. If the NWMLS or corporate attorneys wanted a signature on the pamphlet, there would be a place provided. The way to document that the buyer has received the pamphlet is for the client to sign the Buyer Agency Agreement.

- **Gives the buyer written consent for dual agency.**
If a broker could possibly show an inhouse listing, for example, the broker must have the buyer understand dual agency and get a copy of the pamphlet. This is documented on a Buyer Agency Agreement. Dual agency must be agreed to in writing.
- **Details terms of compensation.**
How much does the buyer's agent get paid? The NWMLS discloses the commission paid by the seller for the buyer's agent. If that commission is less than what the buyer's agent requires by contract with their firm, less than what will cover their time and expenses, or is nothing, then the buyer can negotiate the payment only with a Buyer Agency Agreement.
- **Puts commission in writing if there is no listing agreement.**
If a buyer elects to purchase a house that is not listed in the NWMLS, this commission section details the amount of commission that the buyer agrees to pay to compensate their agent. If a property seller refuses to agree on paper in a listing or as a for sale by owner, to pay a commission, the buyer's agent is not required to show that property.
- **It has an attorney's fees provision**
So that if the broker is sued and wins, the other party is responsible for their attorney's fees.

Buyer's Agency Agreement can be exclusive or non-exclusive

Can be either exclusive or non-exclusive for a given period of time to protect the broker commission.

Exclusive Agreement

This would be similar to the idea of an exclusive listing agreement. An exclusive buyer agency agreement binds the buyer to purchase any property with the buyer's agent. It includes during a time period and within certain boundaries.

A non-exclusive agreement means that any property information on potential listings for sale that a buyer's agent provides to a buyer, would require a payment of commission if the buyer decides to buy one of those properties during a time period.

How to use a Buyer Agency Agreement?

Real estate brokers in Washington state seem to avoid using a Buyer Agency Agreement. With the disclosure of buyer's agent commission to the sellers and the buyers, the real estate broker may be in a position to discuss and negotiate commission in order to get paid. This will require the use of the Buyer Agency Agreement.

A Buyer Agency Agreement has been available in Washington State for decades. It is not a new form, though it has recently been changed. In other states the Buyer Agency Agreement can be as long as 7 pages with terms similar to the WA state Law of Agency.

When You are Both Holding Hands .. Dual Agency

Under the amended Law of Agency RCW 18.86.020 it states:

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

This language requires an agreement between the firm and the parties and that the firm has appointed the broker as agent for both parties. It must be in writing. Checking a box on the purchase and sale agreement does not constitute an agreement in writing.

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 in the listing agreement. If the agent acts as a buyer’s agent and is only going to represent the seller, the agent could have created an undisclosed dual agency situation. Undisclosed dual agency can create misrepresentation. If it is not in writing according to the law, the agent should not be acting as a dual agent.

Chapter 2

Organizational Structures and Responsibilities

Broker Responsibilities when in Management *

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 broker's 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.

It has been a common practice within many real estate firms to have an additional layer of organization. Many offices operate with "teams." Though not defined under the laws, the manager of a team would only need a managing broker's license if the designated broker defined and delegated duties in writing.

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.

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.

"Teams"

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

The following can be examples of current team organization

- A husband and wife working together. Once can be licensed as a broker and the other unlicensed. One or both can be managing brokers.
- A team organized under the name of a "top" agent can include an entire management structure. There can be listing agents, buyers agents, and transaction staff. The lead agent can be licensed as a managing broker and be delegated duties to supervise the others within the sub organization. Or

the lead agent can hold a broker's license and have no duties to supervise the other brokers within the team.

- A group of agents can work together as a team with or without using a team name. They can work together with clients. They can all be licensed as brokers or there can be one broker with a managing broker's license who is responsible for the team records.

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

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

Unlicensed Assistant Guidelines

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](#)

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.

- Have buyers prequalified before showing any properties.
- Have clients sign a buyer agency agreement,
- 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.

Don't let buyer's do something stupid

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 put away valuables.

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!

Secret Listings

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

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

During the Legal Symposium in May 2015, Christopher Osborn spoke at length about the problems with off market and pocket listings. One entertaining and serious discussion included the motive for a real estate broker to have a "pocket listing" agreement with a seller instead of an actual signed listing agreement with the MLS. The excuses listed included: the seller did not want to be identified, the house needed to be staged, the owner not ready to show, the property is high end, the owner wants to limit exposure (could be dangerous under fair housing), the owner wants to "test" the market, etc. All those are basically excuses and as a real estate instructor I also hear them in my classes.

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

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

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

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.

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 the conduct and professionalism of the broker on the other side of the transaction.

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

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

The type of complaints can include:

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

Chapter 3

Legislative Issues

A. Real Estate Excise Tax*

What is the Excise Tax change?

Effective Jan 1, 2020, the current flat 1.28% Washington State Real Estate Excise Tax changes to a graduated tax scale based on the selling price of the property. Taxable sales include transfers of ownership in real property and in controlling interests in entities that own real property in Washington. Real property includes any interest in land, or anything attached to land.

Why was this enacted?

There has been discussion in the legislature for a progressive or tiered real estate excise tax for several years. That means that people that have more means should pay more tax is the underlying principle. This is referred to as the Real Estate Excise Tax or REET. Different thresholds of real estate sales will trigger a different amount of excise tax.

What was the bill to change the excise tax?

The Engrossed Substitute Senate Bill 5998 created a graduated real estate excise tax during the 2019 Legislative Session. The text of the bill can be found at: <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5998-S.SL.pdf>

What is the graduated tax scale?

This is for the state tax. Local jurisdictions can add their own tax rates.

Transactions up to \$500,000	Rate 1.10%	About a 15% about \$750 savings for most clients
Transactions \$500,000 to \$1.5M	Rate 1.28%	Remains as the same plus the savings below \$500,000
Transactions \$1.5M to \$30M	Rate 2.75%	
Transactions \$3.0M and higher	Rate 3.0%	

How does it affect real estate transactions?

This means that about 90% of all transactions will see a decrease in the excise tax!

It is a much higher excise for tax for large transactions including commercial and multi family transactions.

Are some sales exempt?

A sale does not include a transfer by gift, devise or inheritance or the transfer of property by tenants in common or as the result of a court decree. It does not also include the assignment of an interest in property from one spouse or domestic partner to another when in a divorce or dissolution of domestic partnership. There are a few other exceptions to the definition of a sale for this purpose that remain the same prior to the tax changes. It will not apply to sales of timberland or agricultural land which will stay at the current 1.28% flat tax.

What is the change in time period affecting controlling interest transfer or acquisition?

The REET legislation expands the period for determining whether a controlling interest (50% or more) in an entity that owned real property was transferred or acquired for this excise tax purposes to 36 months. Sellers of minority interests in legal entities that own property in Washington may find themselves subjected to REET based on transactions by other parties that occurred up to 3 years prior or after their sale. The measure of REET in a controlling interest transfer is the full value of the real property owned and not the selling price.

Advisory Vote on November 2019 ballot

On November 5th, 2019 there were 12 “Advisory Votes” on the ballot in Washington State. An advisory vote is a non-binding vote. The votes will not change the law. The purpose is to advise the Legislature to repeal or maintain a tax increase.

There were 12 advisory votes about taxes on the November ballot. All the advisory votes with the exception of 3 were repealed. The voters opposed the new Real Estate Excise Tax (REET) approved by the state legislature earlier this year. According to the [latest vote count](#) by the Secretary of State’s Office, voters opposed the new REET by 65.8 percent, with the measure being rejected by all 29 counties. This opposition appears to be the strongest of all the advisory votes.

While some observers put little stock in non-binding advisory votes, others feel the results will likely shape discussions regarding existing taxes and any new revenue proposals. It could have been misunderstood by many of the voters as the graduated scale could benefit such a high percentage of home sellers.

B. Business and Occupation Tax*

Were the rates increased?

The Business and Occupation Tax rates were increased for many service industries in the 2019 legislature. There was about a 20% increase.

Are real estate brokers affected?

Because commissions don’t get the small business tax credit that other service industries get, the real estate brokers were exempted from the increase.

C. VA (Veterans Administration) Housing*

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

Veterans who meet service length requirements, service members on active duty, reservists and national Guard members and certain surviving spouses of deceased Veterans may be eligible for VA loans. The advantage to a VA Guaranteed loan is that

There may not be a down payment, no mortgage insurance, a VA funding fee is built into the loan, can often be assumed.

A veteran must have a Certificate of Eligibility (COE) in order to prove entitlement.

The underwriting criteria for a VA loan includes:

- There is no maximum debt ratio. However, the lender must provide compensating factors if the total debt ratio is more than 41%.
- There is no maximum loan amount. However, VA does limit it’s guaranty. Veterans can borrow up to \$453,100 without a down payment in most of the country.
- VA’s residual income guidelines ensure Veteran borrowers can afford the loan. These guidelines establish how much money a Veteran must have left over after all debts and living expenses are considered.
- There is no minimum credit score requirement. Instead, VA requires a lender to review the entire loan profile.

The loan limits established for your area and neighboring areas can be found by contacting a lender. They are not easy to research online and the lenders have the most recent information available.

D. Video and Audio recording

Just about every person is always walking around with a camera and video camera in their pocket.

Washington State laws regarding recording or divulging private communication RCW 9.73.030 requires consent to record any private communication between two or more individuals by an electronic device without getting consent of all the participants. Consent would be considered obtained when one party has announced to all other parties engaged in the conversation, in any reasonable effective manner, that such communication or conversation is about to be recorded or transmitted. This statute has been on the books for over 30 years.

When sellers list their home for sale they open the doors to brokers and clients to preview the property. In this day of constant electronic recording, it would almost be expected that buyers would take photos inside the house. In addition, there are sellers that have installed and hidden video sometimes including audio recording in the house.

If there is any chance that the seller has audio recording, they should notify any person entering that they may be recorded. A prominently displayed sign would most like be adequate, according the Justin Haag, from the NWMLS.

E. DOL Renewal and License Online Features

Dashboard

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.

Renewals

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.

Audits

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

Fingerprinting

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.

Changing/ Transferring

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.

The online system is being revamped in 2020 so you might want to expect that there may be some issues.

Chapter 4

Class Action Real Estate Lawsuit

Class Action Lawsuit in 2019 Largest in History

The real estate industry is rocked across the country with a class action lawsuit against the National Association of REALTORS and most of the top real estate franchises in the country. The lawsuit originates with a seller, Christopher Moehrl in Edina Minnesota who questions the compensation paid to real estate brokers.

Christopher Moehrl is a resident Minnesota who listed his home for sale in 2017. The home was listed on the Northstar MLS. He was represented by a REMAX franchisee and the buyer was represented by a Keller Williams franchisee. As part of the transaction, he paid a total broker commission of 6%. The buyer's firm was paid 2.7% of the total commission paid by the seller. He started wondering why he was paying so much money to the buyer's agent because it wasn't evident that the commission matched the work he perceived.

The lawsuit claims a conspiracy with the National Association of Realtors, MLS's, and member brokers/firms. Briefly, the lawsuit claims:

- Realtors/MLS rules require all brokers to make a blanket non-negotiable offer of buyer broker compensation when listing on the MLS.
- The consumers are saddled with a cost that would be borne by the buyer in a competitive market.
- Without the rule, the buyer brokers would be paid by their clients and would compete to be retained by offering a lower commission.
- The Realtors and firms have kept buyer broker commissions in the 2.5 to 3% range for many years despite the diminishing role for buyer brokers.
- Buyer broker costs are similar regardless of the price of the home, yet they are paid based on the price of the home.
- Home sellers are forced to pay commissions to buyer brokers, their adversaries, in negotiation to sell their homes, therefore substantially inflating the cost of selling their homes.
- Home sellers have been compelled to set a high buyer broker commission to induce buyer brokers to show their homes. Home sellers have paid inflated buyer broker and total commissions.
- Price competition among brokers to be retained by home buyers has been restrained.
- Competition among home buyers has been restrained for the inability to compete for the purchase of a home by lowering the buyer broker commissions
- Real estate firms have increased their profits by inflated total commissions.

In addition, the lawsuit claims:

- A comparison of commissions paid in other countries with those of the US shows brokers in US are much higher.
- Commission rates have doubled over the years because house prices have risen. Rates are more than double the rate of inflation.
- There is a great conspiracy between the member firms and the MLS/Realtors.
- The buyer brokers are entirely compensated by home sellers.

- The structure of the MLS is such that an alternative MLS would not survive so there is no competition
- Realtors advise MLS to enter into non compete agreements with third party websites such as Zillow..

The example using the commission in other countries includes the UK. There is no MLS in the UK. The listing fees have sun since 2011. The seller pays on ly the listing agent who does not have the MLS fees and Realtor dues. Buyers find a house and pay a solicitor (attorney) to write up the transaction. The taxes for a buyer can be almost 15%. It is not effective to compare the two countries.

In the class action lawsuit, it includes a script used to train real estate agents dealing with a seller who wants to reduce the buyer’s firm commission to save money. The training script at a major franchise gives agents a response to a seller. “When you reduce the commission, you reduce the incentive for that agent to bring a buyer to your home.” The script goes on to say, “If an agent has 10 different houses to show, nine of which have an X% commission and one of which comes with a lower commission. Which house do you think they are going to show?” The lawsuit is trying to show collusion between firms.

This lawsuit is quite far reaching touching most of the major franchises and the National Association of REALTORS. It will most likely be in the courts for many years to come. No formal changes have been suggested by NAR to member MLS’s

National Association of REALTORS (NAR) Responds to their Members

The general counsel for NAR calls the lawsuit “baseless.” According to NAR the question is, “Who really has the best interests of the consumers in mind? It is the attorneys for the plaintiffs or the REALTORS who help people navigate the most significant purchase/sale they’ll ever make?” NAR published an article in the Fall 2019 magazine with an outline of their response. The brief article lists 4 reasons the MLS promotes a procompetitive market for real estate.

Here is an outline of the 4 reasons.

1. REALTORS are champions of homeownership, property rights and the communities they serve. They adhere to a strict code of ethics.
2. The MLS system and the way commissions are paid create competitive, efficient markets that benefit home buyers, sellers and small business. commission structure ensures greater access for a large community of home buyers who might otherwise be priced out of the market.
3. Local expert brokers play a crucial role in helping buyers and sellers achieve their goals.
4. These lawsuits are wrong on the facts, wrong on the economics and wrong on the law. Commissions are negotiable and can be negotiated at any point during the transactions.

The lawsuit has grown and the original one joined another lawsuit in August. NAR has filed a motion to dismiss the lawsuit.

The Department of Justice Opens Investigation

The Department of Justice has opened it’s own investigation in 2019 into real estate sales apart from the lawsuits. They have demanded information from CoreLogic, which is a platform for most of the MLS’s in the country.

They are looking into whether or not MLS services prevent competition in the real estate fee structure. The question is whether agents are engaging in anti competitive practices. One such practice is that brokers in some areas can filter listings by the commission offered. In some markets, agents have been trained to only show properties with a certain minimum commission.

Northwest MLS Changes Compensation Disclosure Rules

In response to the class action lawsuit against the National Association of REALTORS, the Northwest Multiple Listing Service (NWMLS), has changed rules that could have a dramatic impact on the real estate industry in the Puget Sound Region. NWMLS is the largest MLS in Washington State but it is not the only MLS. It is not managed or affiliated with the National Association of REALTORS or the Washington Association of REALTORS. This is the information released in 2019.

Three Changes to Real Estate Commission Disclosure

The NW MLS voted to change the disclosure of commission to increase transparency and flexibility for the consumers. The changes take effect in 2019.

1. Publishing the Selling Office Commission

The first change is that the Listing firm will be allowed to publish the Selling Office Commission (SOC) on the firm's public website. The amount of commission paid by the Seller to the Buyer's agent will be on the IDX and VOW websites and the client portal in the Matrix system.

"Making this information readily available to consumers allows for complete transparency with regard to buyer's broker compensation and provides consumer with additional information at the outset of the transaction," according to the NWMLS. "Early and better access to all the relevant information about a real estate transaction will help consumers make informed decisions about every component of the listing, selling, and purchasing of real estate."

2. Seller not required to Offer Commission to Buyer's Broker

The second change removes the requirement that a listing contain an offer of compensation to the buyer's broker. That would mean that the seller may not have to publish a payment of commission to the broker that procured the buyer.

According to the Washington State Law of Agency RCW 18.86: Brokers are not required to show properties as to which there is no written agreement to pay compensation to the buyer's agent.

The NWMLS will change the forms to alert sellers that the buyer's brokers are not required to show property for which there is no written agreement to pay compensation to the buyer's broker. This is just a notice as it has been in the Law of Agency for decades.

3. Buyer's Broker can Negotiate Commission with Seller

If the seller does not publish an offer of compensation to the buyer's broker, the revised rule allows the buyer and the buyer's broker the opportunity, as a part of the buyer's offer, to negotiate for compensation for the buyer's broker.

The NWMLS explains, "This change allows for greater flexibility for sellers when listing property, while affording buyers and buyer's brokers a vehicle for negotiation for compensation (if none is offered) when making an offer to purchase." On the other hand, the commission for the buyer's broker has been typically paid by the seller at closing. If the buyer is required to pay the commission to the buyer's broker, that may affect the opportunity for the buyer to qualify to purchase the house as lenders may not let them finance the commission amount.

Then there is the issue of representation. According to WA state Law of Agency, the agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee. The brokers that represent buyers' in transactions will lose buyers who purchase directly from the listing agent to "save" the commission. Those buyers may not understand that in that case, they will have no representation in the transaction.

Selling Firm Commission Addendum

The form 41(c) will be revised to include the three options for buyers and buyers' brokers to negotiate for compensation from the seller.

- 1. If there is no offer of compensation in the listing, the form will allow the buyer and the buyer's broker the opportunity to negotiate for compensation for the buyer's broker to be paid by the seller:*
- 2. Consistent with the current Rule 104(d), the form will allow the buyer and buyer's broker the opportunity to negotiate for additional compensation from the seller, where the SOC is less than the buyer's obligations to the buyer's broker in a Buyer Representation Agreement; and*
- 3. If the property is not listed (i.e. a For Sale by Owner (FSBO), the form will allow the buyer and the buyer's broker the opportunity to negotiate for compensation for the buyer's broker to be paid by the seller.*

Buyer Representation Agreements

The rule revisions may increase the use of buyer representation agreements (Form 41A Buyer Agency Agreement) While not required under WA state Law, many buyer's brokers are not using the forms. The seller has an agency agreement within the context of the listing agreement. The seller has always been able to determine the level of compensation they want to offer a buyer firm.

The Buyer Agency Agreements have been in use for many years, but most brokers have been avoiding them. Form 41(a) gives the consumer the option to have an exclusive Agency Agreement or not with a real estate broker. Brokers, the NWMLS and the Dept of Licensing have encouraged buyers' broker to use the form.

The Buyer Agency Agreement establishes a formal, contractual relationship with the buyer. In addition, it provides for the payment of commission for the buyer's broker services in the event the seller does not offer sufficient compensation for the buyers' broker. The buyer and the buyer's broker can agree about the payment of commission. The revised form also provides that the buyer is responsible for inspecting the property to ensure that the property is suitable for the buyer's needs. This form has a provision which entitles the prevailing party in any dispute to recover its reasonable attorney's fees and costs.

The Buyers Agreement No Agency has also been revised with similar terms.

The Future and Implementation of the new NWMLS Rules

If you drop an ice cube into a hot cup of tea, it might affect the temperature of the tea and it might not! There are many factors involved including timing. The rules went into effect in October 2019. Some brokers wave them off as just a reaction to the lawsuit. Others think that the way real estate compensation is negotiated will throw the industry on its head. Only time will tell.

Chapter 5

Fair Housing and Anti Discrimination*

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

What is Fair Housing

Fair housing is the right to choose housing free from unlawful discrimination. Fair housing laws protect people from discrimination based on race, color, religion, sex, national origin, familial status, disability.

In Washington State, marital status, sexual orientation, veteran or military status and gender identity are also protected. There are further protections based on the city or county in which you reside. For example, the presence of a Section 8 voucher is protected in Seattle, Bellevue, Redmond, Kirkland, and Vancouver.

What is a protected class?

People that identify as a person in a group listed as a protected class share common characteristics. Every person can identify as being in one or more protected class. We all share our race, religion and national origin with many other people. Protect classes are not necessarily minorities. It is when we are discriminated against because of that characteristic that special protection is granted under Federal, State and local laws.

Are you a member of a protected class?

Yes, every person has characteristics under the laws. Every person can be described by race, color, sex, religion, and other protected classes. It is when those characteristics are used to show a limitation, preference or discrimination that any person can have protections under the laws.

Federal Laws

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

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

The protected classes are:

Race Color Religion Sex National Origin Familial Status Handicap/Disability

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

Washington State Law on Discrimination

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

Washington State Human Rights Commission (WSHRC)

The Commission has a cooperative agreement with the Department of Housing and Urban Development (HUD) to process and investigate dual-filed housing complaints for which our Commission receives finding under the Fair Housing Assistance Program (FHAP). The Commission is a FHAP agency because our law is substantially equivalent to the federal Fair Housing Act. Most of the Commission's housing cases are dual-filed with HUD; however, the state fair housing law is more expansive than the federal fair housing law and occasionally the Commission will prepare a complaint with Commission jurisdiction only.

These are some of the issues/ cases and examples of what you should know regarding the protected classes in Washington state.

Race /Color in Housing

It is illegal to discriminate on the basis of race or color

Creed/Religion in Housing

It is illegal to discriminate based on a person's religious beliefs.

National Origin

It is illegal to treat people unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background even if they are not. It is illegal to discriminate based on a person's national origin. The Washington State Human Rights Commission does not ask or record immigration status

Sexual orientation and Gender Identity in Housing

It is illegal to treat someone including an applicant or employee unfavorably because of that person's sex. Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is discrimination.

Last November in Hawaii , the commission found that a landlord discriminated against a resident based on her gender identity and expression and awarded the resident a total of \$95,000 in damages, including \$75,000 in emotional distress damages and \$20,000 in punitive damages. The landlord didn't appeal the decision.

Under Hawaii state law, it's a discriminatory practice for an owner or any other person engaging in a real estate transaction to discriminate against a person in the terms, conditions, or privileges of that real estate transaction because of sex, including gender identity and expression.

According to the resident's complaint, she lived and worked as the property caretaker while the landlord resided in Florida. The resident said that the landlord visited the Hawaii property to hold retreats for his mainland-based business and first met her in 2012 when she was using a name traditionally associated with the male gender and presented as male. After the landlord saw her expressing her gender identity for the first time in person, however, the resident claimed that the landlord harassed, threatened, and forced her off the property.

At the hearing, the resident testified that she suffered emotional distress as a result of the landlord's actions. An expert on bias crimes against lesbian, gay, bisexual, and transgender individuals testified about the pervasive stigmatization of transgender individuals and research indicating that transgender women are at greater risk of being subjected to violence. In light of this heightened risk of harm, the expert said that transgender individuals have reason to take threats of violence seriously.

March 2019

The Fair Housing Coach

Sexual Harassment in Housing

In Massachusetts, the Justice Department recently filed a lawsuit alleging that female residents of rental properties were subjected to sexual harassment and retaliation, in violation of the Federal Fair Housing Act.

The lawsuit alleged that from at least 2009 through the present, the landlord sexually harassed female tenants of rental properties owned by the landlord and related businesses. The complaint further alleges that an employee, a Level 3 registered sex offender, also harassed and assaulted female residents.

The complaint alleged that the landlord engaged in harassment that included making unwelcome sexual advances and comments; engaging in unwanted sexual touching; offering to grant tangible benefits—such as reducing rent amounts—in exchange for engaging in sexual acts; refusing to provide needed maintenance services or taking other adverse housing actions against female residents who resisted or objected to his unwelcome sexual harassment; intimidating female residents by monitoring them from outside their apartments or rooms; and, after receiving notice of the employee's alleged sexual harassment of female residents, failing to take any action to prevent the employee from future sexual harassment.

The complaint further alleges that the employee subjected female residents to unwelcome sexual contact including groping, sexual assault, and forced touching of their bodies, without consent; unwanted exposure to female residents; making unwelcome sexual comments and sexual advances toward female residents; and making intrusive, unannounced visits to female residents' units to conduct and further his sexual advances.

September 2019

The Fair Housing Coach

Familial Status

This case has not gone to court yet. It is a good practice to have two “persons” per bedroom. Fair housing laws do not have occupancy standards.

HUD recently announced that it's charging a couple who owns an apartment building in Georgia with violating fair housing law by refusing to rent to, imposing different rental terms and conditions on, and making discriminatory statements about families with children. The Fair Housing Act makes it unlawful to discriminate against families with children under the age of 18. Housing may exclude children only if it meets the Fair Housing Act's exemption for “housing for older persons.”

The case came to HUD's attention when Savannah-Chatham County Fair Housing Council and the mother of two minor children filed complaints alleging that the couple employed a policy limiting the number of children that could reside in their apartments. HUD's charge alleges that the couple's business voicemail recording announced the policy to people who phoned looking for housing. The policy allows only one child in a two-bedroom unit and two children in a three-bedroom unit.

“Landlords and property owners don’t have the right to deny housing to families simply because they have children,” Anna Maria Farias, HUD’s Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. “HUD will continue to take appropriate action when individuals in the position to control access to housing fail to meet their responsibility to comply with the Fair Housing Act.”

“The Fair Housing Act generally prohibits landlords from limiting housing to families with a certain number of children. HUD is committed to enforcing the Act to ensure that families with children are given equal housing opportunities,” said Paul Compton, HUD’s General Counsel. *September 2019*
The Fair Housing Coach

In Las Vegas, HUD recently approved a settlement between a resident and the owner and manager of a housing community to resolve allegations of discrimination against families with children by allegedly denying unsupervised children's access to the property's common areas.

A mother living at the community filed a complaint alleging that the property manager made her son and other children leave a recreational area of the complex after observing the children playing without their parents observing. The woman's complaint also alleged that the community maintained an unwritten policy that children couldn't use common spaces without adult supervision. The owner and manager denied that they discriminated against the woman but agreed to settle the complaint.

Under the agreement, the community agreed to pay \$5,000 to the mother and to allow her to terminate her lease without penalty if she chose to do so. The community also agreed to provide fair housing training for its employees and circulate a letter to residents stating that children do not need to be supervised in order to use the development's common areas.

"Individuals renting units at apartment complexes have a right to use any amenities that are available, and this applies to families who have children," Anna María Farías, HUD's Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. *August 2019*
The Fair Housing Coach

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.

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.

Honorably Discharged Veteran and Military status in housing

It is a violation to discriminate against individuals on the basis of military status or being an honorably discharged veteran. A housing provider should not ask questions about political beliefs related to military service or questions based on the assumption that veterans and service members have PTSD or other mental health conditions or disabilities. It is ok to offer incentives to people who are military personnel or veterans.

Handicap/ Disability

A housing provider including landlords, property managers, homeowners, and condominium associations cannot discriminate against persons with disabilities and must reasonably accommodate persons with disabilities.

If you or someone living with you is disabled, there are additional protections. Your housing provider may not:

- Refuse to allow reasonable modifications to a dwelling or common area, at your expense, if necessary, for the person with the disability to use the housing. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification.

- Refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. This can include service and comfort animals, parking, access, etc.

A reasonable accommodation could include an assistance animal. Fair Housing law does not have a training requirement for such animals. In order for a person to have an assistance animal, the person must have a disability, request the animal as a reasonable accommodation, and must be able to show that the animal is necessary because of the person's disability by presenting a note from a medical provider. Emotional support and comfort animals would be included. Fair housing does not limit the species of service animals.

The California Department of Fair Employment and Housing (DFEH) recently announced that it has reached a \$50,000 settlement in a housing disability discrimination case with a Modesto apartment complex owner and its property manager. The case involved a resident who claimed that her lease was illegally terminated based on her disability.

In her complaint, the resident claimed that the community terminated her lease because throughout her tenancy, she experienced multiple medical emergencies that required the assistance of an ambulance to transport her to the hospital. The property manager allegedly reported that other residents had complained about these emergencies.

"Housing providers cannot terminate or decline to renew a lease simply because they disfavor tenants with disabilities," Kevin Kish, Director of the DFEH, said in a statement. "And to the extent a tenant with a disability needs a reasonable accommodation, landlords must provide it unless it would constitute an undue financial or administrative burden, a fundamental alteration of the program, a direct threat to the health and safety of others, or would cause substantial physical damage to the property of others."

November 2019

The Fair Housing Coach

Hate and Bias crimes in Housing:

Hundreds of hate crimes are reported in Washington state every year. According to the national FBI hate crime statistics 2017, 27.5% of all hate crime incidents across the nations occur in or near residences and family homes. In Washington state a person is guilty of malicious harassment if he or she maliciously and intentionally commits causes in hurt or damage to property or threatens a person or group of persons because of her or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation or handicap.

Substance Use Disorder

Substance use disorder is a condition that results in impairment in daily life. And is covered under the definition of "disability. Excluding individuals who take medications for Opioid use Disorder from housing may be discriminatory according the WSHRC.

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 ** Ancestry Color Creed	Disability Gender Identity Parental status * Political ideology	Race Religion Sex Sexual Orientation	Use of Section 8 certificate Use of service animal Veteran or Military status
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*Not applicable to Employment or Fair Contracting cases

**Not applicable to Public Accommodations cases

Retaliation

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

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

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

Harassment

Seattle's anti-discrimination laws also protect you from harassment. Harassment is conduct that is directed at you because of your race, religion, gender, sexual orientation, disability, national origin, etc. Harassment can include: Threats, Slurs or epithets, Threatening acts, Posting offensive materials on walls, bulletin boards, e-mail, etc. To be considered harassment, conduct must be serious and frequent enough to create a hostile environment and Interfere with your ability to work, live, or enjoy a public place.

Tacoma Fair Housing

The Tacoma Human Rights Division investigates and resolves complaints alleging discrimination in housing which violates the Law Against Discrimination of the Official code of the City of Tacoma, as amended, and the Federal Fair housing Act. The protected classes include:

Race	Religion	Sexual orientation	Veteran / Military status
Color	Age	Ancestry	Familial Status
Sex	National origin	Section 8	Disability
	Marital Status	Gender Identity	

What does that mean to you, as a broker, in the practice of real estate?

As a real estate broker, you are required to promote fair housing and anti-discrimination. Examples of what would constitute discrimination may include:

- Refuse to negotiate for housing
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- Make housing unavailable or otherwise deny a dwelling
- For profit, persuade owners to sell or rent
- Advertise or make any statement that indicates a limitation or preference based on a protected class
- Deny anyone access to or membership in a facility or service related to the sale or rental of housing
- Set different terms, conditions or privileges in the course of negotiating, executing, or financing a real estate transaction

Also

- Ask questions regarding a person's background
- Discuss whether a person would be "comfortable" in certain areas based on their familial status, creed, or sexual orientation, for example.
- Show only properties that are close to a person's place of worship unless the person requests a certain location.
- Determine that one prospect is possibly more qualified than another based on their national origin or language, etc.
- Discuss with a seller the marital status, national origin or familial status or other background information of the buyer making an offer.
- Participating with a seller to choose a buyer that might "fit" in the neighborhood better because of familial status or religion.
- Evaluating offers on a property based on the background of the buyer and not the terms of the offer.
- Deny a person a rental because of a service or comfort animal.
- Use any criteria describing a protected class when advertising.

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 buyers seniors?

- A married couple is more stable than a single woman. (major lawsuit on this statement)
- This is not a good neighborhood for children
- This would not be a good neighborhood for disabled children.

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

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

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

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

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

Love Letters from Buyer to Seller

Whether using a poem, photo collage or a love letter, buyers are trying to "promote" their offers to the sellers. Especially when the 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 legally choose one buyer over another based on a protected class. Protected classes are NOT "minorities." EVERY person falls under protected classes.

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

Love letters that are highlighted in articles throughout the internet most often come from a husband and wife with children. Many are accompanied by photos. Examples of love letters straight from the Seattle PI (edited) in may 2013 include:

Dear ____ Family,

My name is Christine and my husband's name is, Nik. I was born and raised in _____ city and Nick was born in _____. We met and fell in love in 2010 and were married shortly after. We have a wonderful, smiling 4 month old, Lily. We spent our dating time in Capitol Hill and enjoyed it very much. Green Lake, Ravenna and Maple Leaf are where we hope to raise our children and put down long term roots. When we started our house search, proximity to this neighborhood was our priority. Your home is the first we have seen that genuinely meets all of our wants and needs. We can picture ourselves drinking coffee while watching our children play in the backyard. We would be deeply grateful to you if our offer is chosen. Sincerely, a married couple with child

Dear Sellers,

I am a single woman who is thrilled about purchasing your home. I have lived in the neighborhood for many years and have saved up money to purchase my first house. This house is perfect for me and my commute to work, my volunteering at the Austrian Club, and the proximity to my diverse family. I have a stable position at planned parenthood and I volunteer to help the homeless. Sincerely, the single buyer

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

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

Sometimes... ok... maybe often... the "perfect family" is not perfect. The husband could be abusive, the son could be a sex offender, the daughter might like to deal drugs. Choosing an offer based on a "sweet" letter and a nice photo could be just what the "family" was hoping for.

Everyone, regardless of their background, beliefs, health/disability, etc, has the right to purchase a home in the area chosen. The seller violates anti-discrimination laws when a seller chooses one buyer over another using any information that could be construed as discrimination. The buyers that lost the property have the right to file a case of discrimination. Real estate agents are bound by federal state and local discrimination laws.

As a selling agent, when you pass on the letter to the sellers and the seller's agent, you cannot claim you had no knowledge of the contents of the letter. As a listing agent, if you pass the letter on to the sellers, then you are giving them a reason to discriminate. The sellers may not understand the laws. Real estate agents have a duty to understand the laws and cannot claim "ignorance" when it 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.

Chapter 6

Property Disclosure

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

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

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

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

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

“The fact or the suspicion that the property or any neighboring property is or was

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

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

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

Lead Paint Disclosure

When a property being sold/leased was built before 1978, the owner/landlord must fill out a “Lead Based Paint Disclosure” form. This is a Federal law that requires a seller or landlord to provide the buyers or tenants about lead based paint. The owner of the property must disclose the location of any known lead based paint on the property and if the property has been inspected. If it has, the owner must provide the buyer/tenant with a copy of the inspectors report. The seller must also give a buyer 10 days to inspect for lead based paint. The seller/landlord must also provide the buyer with a booklet called “Protect your Family from Lead In your Home.”

Mold Disclosure

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

Carbon Monoxide Detectors

Carbon Monoxide is a poisonous gas that cannot be seen or smelled and can kill a person in minutes. It can quickly build up to unsafe levels in enclosed or semi-enclosed areas. Generators in garages or near intakes and use of charcoal or gas grills indoors are common causes of CO poisoning during power outages. Problems with exhaust on furnaces can also be a cause.

Beginning in January 2011 WA state law requires Carbon Monoxide alarms to be installed in all new single family homes and residences including apartments, condominiums hotels, and motels. Existing homes, apartments, condominiums, hotels, motels must have them installed by January 2013. Owner-occupied single family residences, legally occupied before July 2009 are not required to have CO alarms until the property is sold. In that case, the seller is required to equip the residence with CO alarms before any other person legally occupies the property.

In Washington state over 300 people were treated at hospital emergency rooms or CO poisoning and 8 people died during a serious December 2006 windstorm. Between 1990-2005 over 1000 WA residents were killed by Carbon monoxide poisoning.

Over Thanksgiving 2019, Anna Farris, an actress originally from Washington State,, rented a home with her family at Lake Tahoe, a popular vacation destination. Two family members on the multi-generational vacation felt ill and left the holiday dinner to get checked out at a local hospital, where they found out they had carbon monoxide (CO) poisoning, according to Erin Holland, public information officer for the North Tahoe Fire Protection District.

The fire department responded to the rental home — nine people were checked out and treated there, and two additional people were transported to a hospital.

The actress tweeted a photo of the family's empty table with several half-empty plates: "I'm not quite sure how to express gratitude to the north Lake Tahoe fire department - we were saved from carbon monoxide - it's a stupidly dramatic story but I'm feeling very fortunate"

There was no carbon monoxide detector in the rental home.

When firefighters arrived and tested carbon monoxide levels, they found readings as high as 55 parts per million (ppm), more than five times the maximum recommended indoor levels of 9 ppm.

"The youngest member of the family, had they been exposed longer, could have gone into a coma," Holland said. "Every minute makes a difference. We're really glad this story had a happy ending."

I feel the earth move under my feet

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

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

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

Buyer Beware

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.

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.

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

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

Referring Third Party Vendors

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

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

Chapter 7

Writing Purchase and Sale Contracts

What if it isn't a Standardized Form?

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

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

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

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

Unauthorized Practice of Law

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

Specific Forms and Issues*

A. Escalation Clauses

What is an escalation clause and when is it utilized?

An escalation clause is language in a purchase and sale agreement that is intended to help a buyer to beat other offers made on the property. It typically states that the buyer will pay a certain amount above the highest or competing offer the seller receives. There is a maximum price that the buyer is willing to pay sometimes called a “cap.” The NWMLS forms dealing with escalation clauses and the explanation are necessary to have if you are considering this type of transaction.

What is the advantage to adding an escalation clause to a purchase and sale agreement?

A buyer may be anxious to purchase the house. The buyer wants to “compete” for the opportunity to purchase the home. The buyer can be making an offer lower than the list price or the offer can be the list price or higher. The amount that the buyer wants to escalate the price is limited on the contract. The buyer must be able to qualify for the contract escalation sales amount.

What are the disadvantages of using an escalation clause?

The buyer is basically putting all his/her cards on the table. The buyer is disclosing that he/she will be willing to pay more for the property. With or without competing offers, the seller could counter offer the amount the buyer might be willing to pay as his/her cap. The sellers could release that cap or maximum offer amount to the other buyers in hopes of getting another higher offer.

For a seller, it stops the negotiation. The seller could get more money possibly if the buyers just negotiate.

What is a “competing offer” when determining the escalation clause to adjust sales price?

The property might be in demand by two or more buyers. The agreed upon sales price may not appraise which could cause issues for the buyer to qualify. This needs to be addressed in the offer.

The competing offer may not actually be a “competing offer” under the definition on the forms. It may have expired or the buyer verbally made changes.

What if there are 2 or more offers with escalation clauses?

Determining the best offer can be difficult. Along with escalation clauses, the buyer may be requesting the seller to pay some closing costs or make some substantial changes or repairs like a new roof.

What are the buyer and seller options?

The seller can make the decision to not accept an offer with an escalation clause. It may be a higher offer but the terms may not be acceptable.

The seller and listing broker can remove the escalation Addendum from the contract and control the price that way. The seller is not obligated to use the escalation clause.

The listing broker can contact the buyer brokers and request their best offer. The listing broker does not have to disclose what the other buyers are offering. Maybe the listing broker says there is a high offer with a certain cap but doesn't disclose that there are much needed repairs requested and buyers closing costs

to pay. Without the competing offer, the second offer doesn't know. The buyer should be counseled to make their best offer and be careful trying to guess about the other offer.

The listing broker and seller can counter any offer. The buyer might get a counteroffer for the amount that the buyer listed as their maximum price or "cap."

Calculating the sales price of the property when there is an escalation clause?

The escalation addendum contains a worksheet to determine the sales price with an escalation clause. The "net price" is the stated purchase price (or the maximum price if the competing offer contains a price escalation clause) LESS any price adjustments such as closing costs to the buyer. When filling out the form, the purchase price of the second (competing) offer is listed. Subtracted from that price is any price adjustment like closing costs. This is important because the closing costs affect the seller's net.

*If the competing offer is \$325,000 but included \$3000 credit for closing costs the **net price** of the competing offer is \$322,000.*

The escalation amount is added to the net price of the competing offer. In addition, the credits to the buyer are added.

If the escalation amount is \$5000 and the buyer is asking for \$2000 for closing costs, the new purchase price is \$329,000.

What is the definition of "competing offer?"

According to the forms, a "competing offer" must be a bona fide, arms's length written offer containing all the material terms necessary for an enforceable agreement that requires the following:

- a. The full purchase price to be paid in cash at closing
- b. closing no later than ____ (60 days if not filled in)
- c. is not contingent on the sale of the buyer's property.

A competing offer may include other conditions, such as buyer's pending sale of property.

B. Evidence of Funds

How is the evidence of funds forms to be used on all transactions?

It is recommended that all purchase and sale agreements that include funds other than a mortgage loan, use the Evidence of Funds form.

There have been times when the buyer claims to have funds to close a transaction, but they do not have the funds available. The buyer might "hope" that the funds will be available, for example. The Evidence of Funds form was created to allow disclosure of the funds and whether they are available or contingent. The buyer is compelled to give notice that they will provide evidence of the funds needed to close. If there are no funds at closing, this form would not be used.

C. Contingency Sales and Back Up Addendums

What is a contingency sale?

Contingency on selling and closing the buyer's property is a complicated process. Remains on the market 45 days contingency by default

A contingency sale ties two transactions together. A buyer wants to purchase a property but in order to complete the sale, needs to sell their home in order to qualify. The buyer does not want to be stuck without a home.

A seller should understand the contingency agreement. The seller has put their home under contract, but the house remains on the market during a period of time agreed to so that the buyer can get their house sold. The buyer wants to avoid a situation where they sell their house and not have a home to move into. The seller takes a risk that the buyer may not sell their house and while it is contingent other buyers may avoid the seller's house.

Evaluating the Buyer's home

As a listing broker, it is important to evaluate the property that the buyer must sell. It may involve getting a market analysis to find out if the house is marketable.

Bump Clause

A buyer can waive the home sale contingency if they are bumped. The buyer might risk their earnest money by waiving the contingency. If they cannot sell the house and complete the transaction, they might realize that they will lose the earnest money. The seller

Second offer

Another buyer previews the home and writes a second offer. The seller reviews the offer and if the offer is good and they come to mutual agreement. Once the second offer is signed all around and accepted. When the second offer comes through the seller must include a form that discloses the contingency sale and the bump potential. (NWMLS Form 39) This form also includes for the second buyer to waive their rights to "walk" The second buyer (who can only buy if the first buyer walks)

Bump period

The seller can then give the bump notice (NWMLS 44) to the first buyer.

The form gives the buyer 5 (or otherwise written) days to decide to stay and waive the contingency or to terminate. During that period,

- The buyer can give notice they sold the house,
- The buyer can terminate the contingency offer due to not selling the home
- They can waive their home sale contingency and proceed to closing without the sale of the home.

This can mean that the buyer is typically waiving other contingencies (like financing) and close in 30 days.

Home Inspection and Loan application

The home inspection period starts when the contingent buyer and seller mutually agree on the purchase of the house. The buyer is making a good faith effort to move forward with the purchase of the house.

The seller's home is sold with the contingency, but the seller fully expects the buyers to do the inspection and apply for the loan.

Buyer sells their house.. contract signed

Buyer delivers a form to the contingent seller (90K form) and a copy of the mutually agreed contract showing the sale and the time of close. The closing typically is 30 days. Form 22B determines the closing date so that closing on the first house is 3 days after the sale of the second date or the 30 days or the waiver of the contingency. If this is to be extended, there must be another form. (You never use the 22Q form if there is a 22B form being used.)

Buyers considering using a home sale contingency

Does a buyer need to sell their home to qualify for a loan to complete another sale? A broker should discuss with the buyer the options available such as a bridge loan, to complete the sale.

If the buyer can close without a contingency by using other funds or by getting a bridge loan, it might be to their advantage and they won't be in a position to waive options. The buyer can review title, get an inspection, and get the loan application to purchase done. The seller would have to agree to usually a bit longer closing date.

D. Inspection Addendum

It is a best practice to encourage the buyer to have a professional inspection completed on the property. The inspection addendum deals with the time frame and the response. Often, the buyer requests repairs or additional inspections on specific issues.]]

The inspection addendum has been changed to create a process dealing with the problems that are identified by the buyer's inspector. The repairs needed are determined by the buyer's contractor so that the brokers are not acting as contractors.

E. Inspection Response

Know the changes and new language on the inspection contracts

"Buyer is prohibited from delivering Buyers inspection report or any pages of Buyers inspection report to seller unless the seller requests delivery."

What if seller requests it?

If seller requests a copy of the report. Make sure that you have WRITTEN instructions from the seller to provide the report.

Inspection report identifies problems.

If a buyer is triggering the Additional Inspection Provisions then the buyer must deliver a page of the buyer's inspection report where the need or recommendation to seek additional inspections of buyers property.

What if there is wrongful deliver of the inspection report?

If a buyer delivers to the seller a copy of the buyer's inspection report without seller's request, then the buyer is in breach of contract.

What is the remedy for that breach?

Was there damage as a result of that breach? Were the damages material or not? Did the seller have to hire a contractor or expert to refute some finding that may or may not be accurate in the inspection report? A damages claim could be justified. The buyer doesn't evaluate if there are damages. That would be determined by the seller and their lawyer.

The benefit of the Form for the Brokers

This new language and requirements were written so that brokers are not drafting their own contracts with information they are not qualified to deliver. The brokers have traditionally listed out on addendums what the broker thinks seller needs to do to complete repairs identified in the report. Brokers are not contractors and have the ability know what needs to be done to correct the items an inspector list. In addition, neither broker tries to satisfy the problems identified by the inspector.

How does the buyer's broker prepare the request for repairs if they can't provide pages of the buyer's inspection report?

The contractor that does the work is the one that can determine the repairs. A buyer can get a contractor to write a bid for the repair. Attach a copy of the bid to the response. Seller then hires the buyer's contractor to perform the work identified on the bid. Must be done within 3 days before closing and the original inspector can re-inspect. This puts the buyer in control of the process to remedy the problems that the buyer believes is relevant.

What if the seller does not want the buyer's contractor?

The seller can get a bid from another contractor to make the repairs listed in the bid by the buyer's contractor. The seller typically pays for the contractor.

How does it get done in the time frames identified?

On the form, the buyer can't bring a contractor into the house without the seller's permission during the original inspection period. The **additional** inspection period of 5 days allows buyer to bring specialists into the seller's home based on inspector recommendation.

How to provide for additional time?

Some brokers are shifting the time frames so that the original inspection time is less and increasing the additional inspection time. That can help brokers respond to the inspection issues.

F. Closing and Possession Terms

What is the definition of "closing?"

According to the state purchase and sale agreement form, "closing" means the date on which all documents are RECORDED **and** the sale proceeds are AVAILABLE to the seller.

Seller is to deliver the keys and garage door remotes to the buyer on the closing date the possession date (whichever occurs first.)

The closing date cannot fall on a Saturday, Sunday or a Legal holiday or when the county recording office is closed.

Any period of time measured in days on the purchase and sale agreement shall start on the day following the event and shall expire at 9:00 pm of the last calendar day of the specified period of time.

Present All Written Offers*

Offers must be presented in a Timely Manner

"Regardless of whether the licensee is an broker, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:" (RCW 18.86.030 (1) (C)

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

The most basic duty of a seller's broker 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.

Is it ok for a listing broker to hold an offer waiting for a possible higher offer?

The offers on a property must be presented to the seller. It is not right to withhold an offer hoping for another one to be written. 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 broker 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 broker 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.

The listing broker sorted the offers from best to worst.

If there are multiple offers and the listing broker 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.

Does the listing broker have to postpone presentation until the offer review date?

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.

Multiple Offers*

In an active market a seller can often have more than one offer. There are no laws 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 8

Advertising Requirements

Advertising Laws

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

A firm must advertise 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.

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 3rd 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.

Guidelines Brochure for Real Estate Brokers

The Dept of Licensing for WA State published an Advertising Guidelines brochure for real estate Brokers.

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.

Advertising within Fair Housing laws

Real estate advertising must be free from any type of discrimination or preference for a person based on a protected class. This lawsuit against Facebook cuts right to that issue of discrimination in advertising. Twitter and Google have also been investigated.

If you are using online advertising for real estate, make it a good practice to not use any protected class when choosing your audience.

Housing Department Slaps Facebook With Discrimination Charge March 28, 2019 NPR

The Department of Housing and Urban Development is suing social media giant Facebook for allegedly violating the Fair Housing Act. HUD says Facebook does so by "encouraging, enabling and causing housing discrimination" when it allows companies that use their platform to improperly shield who can see certain housing ads.

HUD accuses Facebook of unlawfully discriminating against people based on race, religion, familial status, disability and other characteristics that closely align with the 1968 Fair House Act's protected classes. HUD also alleges Facebook allowed advertisers certain tools on their advertising platform that could exclude people who were classified as "non-American-born," "non-Christian" or "interested in Hispanic culture," among other things. It also said advertisers could exclude people based on ZIP code, essentially "drawing a red line around those neighborhoods on a map." Using a computer to limit a person's housing choices can be just as discriminatory as slamming a door in someone's face.

According to the charge, Facebook uses the protected characteristics of people to determine who will view ads, regardless of whether an advertiser wants to reach a broad or narrow audience. HUD claims that Facebook combines data it collects about user attributes and behavior with data it obtains about user behavior on other websites and in the non-digital world. Facebook then allegedly uses machine learning and other prediction techniques to classify and group users to project each user's likely response to a given ad, and in doing so, may recreate groupings defined by their protected class. The charge concludes that by grouping users who have similar attributes and behaviors (unrelated to housing) and presuming a shared interest or disinterest in housing-related advertisements, Facebook's mechanisms function just like an advertiser who intentionally targets or excludes users based on their protected class.

"Facebook is discriminating against people based upon who they are and where they live," HUD Secretary Ben Carson said. "Using a computer to limit a person's housing choices can be just as discriminatory as slamming a door in someone's face."

HUD General Counsel Paul Compton added, "Even as we confront new technologies, the fair housing laws enacted over half a century ago remain clear—discrimination in housing-related advertising is against the law. Just because a process to deliver advertising is opaque and complex doesn't mean that it exempts Facebook and others from our scrutiny and the law of the land. Fashioning appropriate remedies and the rules of the road for today's technology as it impacts housing are a priority for HUD."

The charges come on the heels of a complaint HUD filed in August, saying "reasonable cause exists" that a violation had occurred. Facebook appeared caught off guard by the announcement. "We're surprised by HUD's decision, as we've been working with them to address their concerns and have taken significant steps to prevent ads discrimination," Facebook said in a statement.

"While we were eager to find a solution," Facebook added. "HUD insisted on access to sensitive information — like user data — without adequate safeguards. We're disappointed by today's developments, but we'll continue working with civil rights experts on these issues."

Chapter 9

Property Management

Designated Broker responsible for property management

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

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

The Designated Broker must be in the Know!

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

Property management agreements must include:

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

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

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

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

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

- Delivering a lease/rental agreement
- Receiving a check made out to the real estate firm
- Showing a rental unit.
- Executing rental agreements under the direct instruction of the managing broker.
- Providing information about the rental unit
- Assisting with the administrative, clerical, financial or maintenance tasks.

An out of state landlord must have a representative in the county where the landlord has tenants so that issues about the unit can be resolved. Landlords are required to provide tenants with information warning about health hazards associated with exposure to mold according to Washington State laws. They also must disclose about lead if built before 1978.

Property Management Trust Funds

Trust accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285. Interest-bearing accounts may be established for Property Management funds if in writing for an individual owner established in writing with interest to accrue to the owner and for only damage or security deposits for tenants of residential properties managed by the firm with interest paid to the owner under certain provisions under the Landlord-Tenant Act RCW 59.18.270.

Mortgage payments for the owner are not permitted to be deducted from the trust account if it contains security deposits or funds belonging to more than one client. A single check maybe be payable to the firm for property management fees and commissions if supported by a schedule of commissions. Property management commission shall be withdrawn at least once monthly. When the property management agreement is terminated, the funds shall be disbursed according to the agreement including the damage or security deposited.

Landlord Tenant Act Changes*

There were several legislative changes to the Landlord Tenant Act in 2019.

Late rent Pay or Vacate notice

The 3 day pay or vacate notices was increased to 14 days. The Landlord must wait 2 weeks to start the eviction process. There is a mandatory form required that is in multiple languages.

Eviction

The eviction time frame has been extended from 3 days to 14 days. Rent is to include all reoccurring charges. All payments from the tenant must be applied to the rent first.

Military rental termination

The military clause clarifies the condition where service members can terminate rental agreements early or with less notice. The notice changes to 20 days after receiving orders.

Raising Rent

The timeline to raise rent has been extended to 60 days no matter how small or large the increase. This includes any increase to base rent as well as other reoccurring fess no defined as rent.

Termination

There is a 120 day notice to terminate tenancy due to demolition, substantial renovation requiring a permit, or change of use (senior home, student housing, short term rental) of any rental property. There is an exception for an owner or immediate family member that wants to make it their primary residence. In that case, a 20 day notice is acceptable.

Chapter 10

Fraud in Real Estate Transactions

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

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

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

White Collar Crime

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

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

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

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

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

Wire Transfer Fraud

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

Foreclosure rescue

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

Other types of fraud include:

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

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

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

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

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

Quiz

Law of Agency, Buyer contracts, Dual Agency

1. A statutory duty means that an agent's responsibilities are spelled out in the Law of Agency. True / False
2. An agent is required to show buyers all properties available regardless of commission offered. True / False
3. An agent can list the identical property next door to their own listing even if it is a better value under the Law of Agency True / False
4. Dual agency MUST be in writing prior to writing the purchase and sale agreement. True / False
5. It is highly recommended to have a written buyer agency agreement with a buyer. True / False

Organizational Structures

6. The word "team" is covered in a section of real estate license law. True / False
7. A designated broker can delegate duties to a managing broker in writing but the Designated broker remains responsible. True / False
8. An unlicensed assistant can show properties to prospective clients. True / False
9. An unlicensed assistant cannot check on the progress of a loan on a transaction. True / False
10. In the NWMLS a real estate agent can or cannot (circle one) promote a listing before being turned into the MLS. True / False

Legislative and Dept of Licensing

11. The real estate excise tax increased for almost all homeowners with the graduated scale approved in 2019. True / False
12. A seller must get consent if they are video and audio recording buyers in the house. True / False

Class Action Lawsuit

13. The largest class action lawsuit has been filed in the country against the National Association of REALTORS. True / False
14. The lawsuit claims that there is conspiracy and collusion between brokers to keep total commissions high. True / False
15. The lawsuit claims that there is a diminishing role for buyer brokers yet the commissions have increased due to the market. True / False
16. The National Association of Realtors calls the lawsuit, "baseless." True / False

Fair Housing and Anti Discrimination

17. Everyone is a member of a protective class if characteristics are used to discriminate against him/her. True / False
18. Federal laws regarding discrimination and fair housing are over 50 years old. True / False
19. Washington Law on Discrimination includes gender identity. True / False
20. It is a violation in Washington to discriminate against individuals on the basis of military status. True / False
21. A broker should not ask questions about a person's background when determining housing preferences. True / False
22. The Washington State Human Rights Commission administers the Discrimination Law. True / False
23. "Does your son have a mental disability," is a question that would be in violation of the Fair Housing Laws. True / False
24. A buyers "love letter" often appeals to a seller to choose the buyer because of their familial or marital status. True / False

Disclosure

- 25. The seller or landlord must disclose lead paint on a disclosure form if the house is built prior to 1978. True / False
- 26. Tenants must be warned about the health hazards associated with mold by providing documentation from Dept of Health. True / False
- 27. Carbon Monoxide is identified by an unusual smell and it is harmless. True / False
- 28. Buyers must take steps to follow up on any defect identified in an inspection report. True / False
- 29. All firms must have a written office policy about the referral of Home Inspectors. True / False

Writing the Purchase and Sale Agreement

- 30. Real estate agents are limited to filling out pre-printed forms prepared by an attorney. True / False
- 31. An escalation clause form has a cap or maximum price that the buyer is willing to pay for the property. True / False
- 32. When a seller elects to work with a buyer's escalation clause, the seller must provide the buyer with the competing offer. True / False
- 33. A seller can choose to not accept an offer with an escalation clause. True / False
- 34. The escalation forms to determine sales price include the buyer closing costs so that there is a net price. True / False
- 35. The evidence of funds form is important to use if the buyer is dependent on a large amount of cash for the purchase. True / False
- 36. A contingency sale ties two transactions together. True / False
- 37. If a second offer is signed by the seller, it triggers the bump clause. The first buyer can waive the contingency to purchase. True / False
- 38. The buyer is prohibited from delivering the buyer's inspection report to the seller unless the seller requests delivery. True / False
- 39. The buyer is responsible for identifying problems and providing the seller with a contractors estimate for items to be repaired. True / False
- 40. Closing occurs the moment both sellers and buyers have signed the documents. True / False
- 41. If a seller has signed an offer, the listing agent is not required to present any other offers other buyers may write. True / False
- 42. There is no law requiring notification on multiple offers, but it is a good practice to notify a buyer that their offer was rejected. True / False

Advertising and Social Media

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

Property Management

- 46. The designated broker must sign all property management agreements. True / False
- 47. Washington state law has extended the time period for notification of tenants to increasing rent to 60 days. True / False

Fraud in Real Estate Transactions

- 48. Ignorance does not save you in a court of law. True / False
- 49. A real estate agent could jeopardize their real estate license or even go to federal prison for committing acts of Fraud. True / False
- 50. The biggest fraud that is hitting real estate transactions is wire fraud. True / False

Quiz for The Legal Edge.. current legal topics and Core 2020-20121

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

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

Print Name _____ **Company** _____ **Signature** _____ **Date** _____

PROFESSIONAL Direction, Email: clockhours@gmail.com



Mandatory Evaluation

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

Why did you choose to take this course? Topic? Time? Cost? Ease? Other?
 A "clock hour" is 50 minutes. This 7.5 hour class should take about 6hrs 15 min. How long did it take you to complete the course? _____

Will the material you learned improve your performance?	
Were the course materials easy to follow?	
Were the course materials relevant to your profession?	
Were your objectives met by attending the class?	

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

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

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

Professional Direction
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