

## Advanced Practices Section 6



# What is a Broker?

by  
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*A Washington State Approved Real Estate School under R.C.W. 18.85.*

# What is a Broker?

## Curriculum

<b>Session Hours</b>	<b>Major Topics</b>	
1 30 min	License law changes Structure of the Real Estate Firm Firm Licensing	Read Handout Take Quiz
2 45 min	Broker Duties and responsibilities Designated Broker Managing Broker Broker Responsibilities Branch Manager	
3 30 min	Educational Requirements Fingerprinting and background requirements Delegating Responsibilities Supervisory Responsibilities Required Records	
4 30 min	Termination and Closing	
5 30 min	Administration of Trust funds and auditing	
6 45 min	Property Management	
8 45 min	Uniform regulation of Business and professions Act	
30 45 min	Disciplinary Actions	

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This is a 5 clock hour course focuses on the newest real estate license laws in Washington State. Learn what the new titles and responsibilities are that affect all licensees. Property management laws are included also.

## *Learning Objectives*

Upon completion of this course, the student will be able to:

1. Identify the various licenses
2. Know the requirements for different licenses
3. Discuss the responsibilities of a Broker and Managing Broker
4. List the required records
5. Identify the laws regarding property management.
6. Learn about the current disciplinary actions taken against brokers

# What is a Broker

## REAL ESTATE BROKERAGE AND BUSINESS PRACTICES

In 2010, it took 7 years and dozens of meetings, committees, emails, industry groups to finally pass the most widespread changes done to Real Estate License laws since they were written in 1925. Changes include new categories of licensure, heightened supervision of new agents, more educational requirements, more detailed responsibilities, and detailed recordkeeping including digital records. This also includes the Property Management statutes.

This class is an overview of the laws and rules as written. There will, over time, be some questions as to the interpretation. This class is not meant as an interpretation but to make you, as a licensee, aware of the laws and rules.

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

### Course Objectives

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

- Identify the major changes in the Real Estate License Laws 18.85
- Know the changes in the changes in the Washington Administrative Code WAC's.
- Be aware of how the changes in the laws affect the real estate licensee.
- Know where to find the actual documents of the laws and rules as written.
- Be able to identify the landlord and tenant responsibilities under the Landlord Tenant Act.
- Know that any property management activities that an agent performs must be under the supervision of the Designated Broker

# Structure of the Real Estate Firm

## Real Estate Firm Licensing

Under RCW 18.85.091 real estate firms have to be licensed. Requirements to be licensed include:

- Designating a Managing Broker as the Designated Broker registered with the DOL.
- Providing the DOL with information as to who has some ownership interest in the firm.
- Make application including fee, business address with firm's records.

The firm has to have a unique name that cannot be the same or similar to currently issued licenses or that implies the real estate firm is a nonprofit or research organization or a public bureau or group. The Department of Licensing can deny, suspend, and reject firm names or assumed names that are in their opinion derogatory, similar to other licensed firm names, implies it is a public agency or government, or non-profit or research organization. A franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

The firm and the Designated Broker are each required to pay license fees. The firm must operate under the firm name or an assumed name as licensed. This includes all advertising must have the Firms name as licensed.

Within a firm the licensees are Brokers. The Designated Broker is the highest authority and responsibility for the firm. The Designated Broker has a Managing Brokers license. The licensed real estate agents licensed under the firm are Brokers. When a Broker has met the requirements including testing from the Dept of Licensing, the Broker can earn the position of Managing Broker.

# Broker Responsibilities

## Designated Broker

A “Designated Broker” must hold a “Managing Broker’s” license. A “Designated Broker” under RCS 18.85.011(10) means a natural person who owns a sole proprietorship real estate firm or who has a controlling interest in the firm who is Designated by a legally recognized business entity (such as a corporation, LLC, or partnership real estate firm) to act as a “Designated Broker” on behalf of the firm. The Managing Broker’s license must have an endorsement from the Department of Licensing as “Designated Broker.”

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

### **Designated Broker Responsibilities WAC 308.124C-125**

The Designated Broker is responsible to:

- Assure Brokerage service contracts or activities in which he/she participated follow the rules/laws of DOL
- Cooperate with the DOL in an investigation, audit or licensing matter
- Ensure accessibility of the firm’s offices and records to the DOL
- Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance.
- Ensure policies or procedures are in place to account for safe handling of customer or client funds or property.
- Maintain up to date written assignments of delegation of Managing Brokers or Branch Manager Duties:
  - Delegating responsibility must be only to Managing Brokers licensed to the firm. Address in writing the duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate Brokerage service contracts on behalf of the firm, supervision of Brokers and Managing Brokers.

Must also address the heightened supervision of Brokers that are licensed for less than 2 years and the hiring, transferring, and releasing licensees to or from the firm.

- Maintain and implement written policies on:
  1. Referral of home inspectors in compliance so that there is a procedure for referring home inspectors to buyers or sellers addressing the consumers right to freely pick one and prevent any collusion between the inspector and the agent.

Regarding the levels of supervision of all Brokers and Managing Brokers of the firm:

- Review with initials of all purchase or lease documents for agents licensed less than 2 years within 5 days of mutual acceptance.
- Ensure all persons in the firm are appropriately licensed

- Ensure all licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and related rules

If the firm must close, the Designated Broker is responsible for:

- Providing DOL a closing firm affidavit within 5 days.
- Within 5 days ensure that all Brokerage service contracts are either terminated or transferred to another licensed real estate firm with the parties written authorization
- Notify all parties to pending Brokerage service transactions that the firm is closing and that the firm will either transfer documents to another firm or ensure they are completed.

The Designated Broker is responsible for ultimate oversight of the firm.

## Managing Broker

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

“Managing Brokers” the minimum requirements are:

- Must be 18 years of age or older
- A high school diploma or equivalent
- A minimum of 3 years of licensed experience as a full time real estate Broker in Washington (or another jurisdiction having comparable requirements) within the past 5 years. Or show practical experience in a business allied with or related to real estate as prescribed by RCW 18.85.
- Has passed the Managing Broker’s license examination

### Managing Broker Responsibilities WAC 308.124C-135

The Managing Broker is responsible to:

- Assure all real estate Brokerage services he/she participated in are in accordance with the license laws and rules.
- Cooperate with the DOL in an investigation, audit or licensing matter
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Keep the DOL informed of his or her address
- If **delegated** by the Designated the Managing Broker is to:
  - ◆ Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance and policies or procedures are in place to account for safe handling of customer or client funds or property.

- ◆ Keep accurate records, , review of contracts, modify or terminate Brokerage service contracts for the firm,
- ◆ Ensure proper and legal advertising by Brokers working under the Managing Broker
- ◆ Ensure all persons representing the firm under the Managing Broker has delegated authority to supervise are appropriately licensed,
- ◆ Ensure licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
- ◆ Follow and implement the Designated Brokers written policy on Referral of home inspectors and address levels of supervision of all licensees which includes review of new Brokers under 2 years of licensure.

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

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

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

Finding: Failed to supervise the activities of a salesperson.

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

Finding: Failed to supervise the real estate activities of a salesperson such that the salesperson engaged in unlicensed real estate activity.



# Real Estate Broker

A “Broker” is licensed to one firm and must be supervised by a “Designated” or “Managing Broker.”

## Broker Responsibilities WAC 308.124C-140

Brokers are responsible to:

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

### Department of Licensing Disciplinary Action

Finding: Unprofessional Conduct Oct 2013

Accepted money and deposited in personal account instead of turning over to firm to deposit into trust acct and/or paid as commission.

Untimely delivery of customer/client funds or property. Didn't maintain property records and maintain for 3 years. Didn't exercise reasonable care and skill in fulfilling Broker duties.

Action: Broker's license suspended for 1 year (stayed not imposed for 3 years), and fined \$2,000.

Finding: unprofessional conduct Oct 2013

Emptied clients trust account.

Action: Real Estate Brokers License revoked for 5 years.

Finding: Unprofessional Conduct January 2014

Failed to report conviction

Action: Real estate Broker license suspended 1 year, stayed (not imposed for 3 years). Fined \$2500

# Branch Manager

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

Each Branch office:

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

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

**Branch Manager Responsibilities WAC 308.124C-130**

The Branch Manager if delegated is responsible for:

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

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

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

# Educational Requirements

	<b>Broker</b>
Current Salesperson	30 hrs Electives (includes 3 hr Core)
PreLicense	60 hrs Fundamentals 30 hrs Real Estate Practices
First Renewal	30 hrs Advanced Practices 30 hrs Real Estate Law 30 hrs Electives (includes Core)
Subsequent 2 year Renewal for all	30 hrs Electives (includes Core)
	<b>Managing Broker</b>
Current Broker or Associate Broker	30 hrs Electives (includes 3 hr Core) Associate Broker license will come back as Managing Broker. Designated Broker will have an endorsement.
Subsequent 2 year Renewal	30 hrs Electives (includes Core)
To get Associate or Brokers License After July Managing Broker	30 hrs Broker Management 30 hrs Business Management 30 hrs Advanced Real Estate Law

All Real estate Brokers, Managing Brokers, Designated Brokers are required to take 30 clockhours of continuing education every two years. It can be done in live classes or by distance learning. It must include the Core Curriculum which is 3 clockhours or it can be combined with another class that has more hours. The shortest clockhour class is 3 hours. An agent can take all short classes or can take one 30 hour class as long as it includes the core or the core is added to make 33 hours. A 30 hour class must be taken over 4 days or more.

# Fingerprint and Background Requirements

Every Real Estate licensee will be fingerprinted and have a background check for the protection of the public. Real estate agents are negotiating transactions that are the largest financial investment in the lives of consumers. They consult on financing, have access to properties, and negotiate contracts. When listing or selling properties, real estate agents have access to properties and personal property owned by clients. When they fill out purchase and sale agreements, they are negotiating contracts that affect the future and investments of clients.

For the protection of the public, the Washington State Legislature added changes to Real Estate License law RCW 18.85.191 requiring all active licensees and licenses applying for active status, renewal or reinstatement have a fingerprint and background check on a regular basis.

All real estate Brokers are fingerprinted when they obtain or renew a license after July of 2010. For those licensed prior to July 2010 they will be chosen to be fingerprinted over a 6 year period as their licenses renew. Then fingerprints and background check will be required every 6 years.

All new licensees after July 2010 are required to have a fingerprint and background check that is submitted with the application. New licensees will be issued a provisional license. It is subject to suspension or revocation based on the results of the fingerprint and background check.

If you have been fingerprinted by another agency for another reason, that fingerprint is not acceptable for the Real Estate Department of Licensing. You will have to submit to another fingerprinting along the guidelines created.

## Getting Fingerprinted

Currently, when the real estate licensee is required to get fingerprinted, they go to a specified location. If you are in Washington, real estate licensees will use MorphoTrust's IdentoGO process to take and submit fingerprints electronically at one of their many Washington locations.

1. Go to [identogo.com](http://identogo.com) to schedule and pay for a fingerprint appointment online.
  - When setting up your appointment, do not select Pay for Ink Card Submission (this is for out-of-state applicants only).
  - If your employer is paying for your electronic fingerprinting: At the payment screen, you will select Billing Account as the payment method and enter the billing account code given to you by your employer.
2. When you arrive at your appointment, you will:
  - Provide your driver license or state-issued ID to verify the information you provided online.
  - Have your fingerprints scanned. The process should take 5-10 minutes.
3. The scanned fingerprints will be sent electronically to Washington State Patrol (WSP).
  - If a national background check is required for your license type, WSP will forward the fingerprints to the Federal Bureau of Investigation (FBI).
4. WSP will electronically send the results of the required background checks to the Real Estate Dept of Licensing.

## **Background checks with a conviction**

If the background check shows a conviction, we'll review and investigate your record on a case-by-case basis. During the review, we'll look at:

- The type of crime
- The level of the conviction
- The relationship of the crime to your profession's practices
- The length of time since the conviction occurred
- Whether you already notified us of the conviction as required

During the review and investigation, we may ask you or other sources to provide more information about the conviction. If we decide to deny your application or proceed with a disciplinary action against your license, we'll notify you and provide information about the process.

# Delegating Responsibilities

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

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

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

The Designated Broker can also delegate in writing the responsibility to supervise all licensees that have been in the business less than 2 years. Supervision is evidenced on the front page of all signed documents. By delegating responsibilities, the Designated Broker still remains responsible for the conduct of the subordinates.

## Supervisory Responsibilities

The Designated Broker is responsible for the conduct of all the subordinates. The Designated Broker is responsible for the conduct of any real estate Broker, Managing Broker, or Branch Manager under his/her license. If there are subordinates working under the Branch Manager, that Branch Manager is responsible for their conduct.

A Designated Broker may delegate by written agreement the handling of funds, trust account records, transaction records and supervision of Brokers to a Managing Broker licensed to the firm. The Designated can also delegate to a Managing Broker by written agreement the authority to amend, modify, bind, create, rescind, terminate, or release real estate Brokerage serviced contracts on behalf of the firm. During the first two years of a Broker's license, a Managing Broker must provide a heightened level of supervision.

The Designated Broker can delegate the responsibility to a Managing Broker to supervise the new licensees under 2 years of licensure. It must be done with written agreement. All Brokerage service contracts which involve a new licensee under 2 years must be reviewed by the Designated Broker (or Managing Broker, if delegated in writing) within 5 calendar days of client's signature. This must be evidenced by the reviewers initials and date on the first page of the documents.

# Required Records

All real estate Brokers and Managing Brokers must submit complete copies of their transactions to their firm according to RCW 18.85.285(1) The Designated Broker is responsible that all transaction documents must be submitted to the Designated Broker or Branch Manager, or delegated managing Broker within two business days of mutual acceptance. WAC308-124C-125(11). The records must include but are not limited to a copy of the Purchase and sale agreement, earnest money receipt, and an itemization of the receipts and disbursements with each transaction.

The Designated Broker is responsible to keep accurate records with include accurate Trust account records. In addition, the Designated Broker is to have an accurate up to date log of all contracts for Brokerage services submitted by the licensees. The firm at one location (the main or branch office) must have a transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and correspondence for each real estate or business opportunity transaction and for each rental, lease contract or mortgage collection account. The Designated Broker must ensure that copies of all required records are made available upon demand.

All required real estate records must be accurate and up to date. All required real estate records shall be kept at an address where the real estate firm is licensed to maintain a real estate office. Transactions not stored at the firm must be readily retrievable. A listing of all transaction must be maintained at the firm's licensed office. All records must be retained and available for the DOL for a minimum of 3 years.

Records may be stored on permanent media storage so long as the storage does not permit modification of the documents. It must be available at any time for viewing and printing in its original form at the Designated Brokers office.

If they are closed for at least one year files can be stored at one central facility in Washington and readily available to the DOL. Records may be stored digitally provided it does not permit modification and is permanent. They must be viewable at the firm's location and indexed.

## **Department of Licensing Disciplinary Actions**

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.

Action: Broker's license suspended until such time as he responds to our request for information.

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.

Action: Broker's license suspended until such time as he responds to our request for information.

Finding: Repeatedly failed to permit us to conduct an audit of the company's records and to respond to our requests for information.

Action: Broker's license revoked for 10 years or until she submits to a complete audit and provides all records requested.

Finding: The Respondent engaged in unlicensed activity by failing to timely notify the department of a change of business location.

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

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.

Action: Broker's license suspended until such time as he responds to our request for information and pays a \$500 fine.

Finding: The Respondent engaged in unlicensed activity by failing to timely notify the department of a change of business location.  
Action: Broker's license is suspended for 1 year (stayed for 2 years) and fined \$500.

Finding: The Respondent engaged in unlicensed activity by failing to timely notify the department of a change of business location.  
Action: Broker's license is suspended for 1 year (stayed for 2 years) and fined \$500.

## Termination/Closing

The licenses of real estate Brokers and Managing Brokers shall be kept by their firm. When they cease to represent the firm, the license ceases to be in force. Brokers and Managing Brokers must submit written notification to the Designated Broker for their firm when they terminate affiliation with the firm. The firm through the Designated Broker, shall give notice to the Director of the DOL including surrender of the actual license. Failure of any Designated Broker to promptly notify the DOL of a termination after demand by the Broker or Managing Broker shall be grounds for disciplinary action.

If a firm terminates a Broker's or Managing Broker's license for violation of License Laws or rules the firm shall immediately file a written statement of the facts to the DOL.

A licensed relationship can be terminated unilaterally by either the Broker, Managing Broker, Branch Manager, or Designated Broker. All terminations shall be by written notice to the Designated Broker or the person who they may have Designated that responsibility. All terminations must be forwarded to the DOL and becomes effective on the postmark, fax or hand delivery of license to DOL. Termination cannot be conditioned on any specific performance by either party.

Upon application and payment of a fee, the Broker or Managing Broker can be issued a new license under another firm for the unexpired term. The Designated Broker is responsible for a closing firm affidavit when closing the firm.



# Administration of Trust Funds

Consumer funds if held by a firm must be handled properly. This is an area that must be taken seriously because any misuse of funds can result in a violation of the laws and rules. In regards to these funds specifically any responsibility for them must be taken care of in a timely manner. Expedient performance under WAC 308-124D-210 means that a real estate licensee shall perform all acts required as expeditiously as possible. If any licensee exercises control over real estate transaction funds, those funds are considered "Trust Funds."

If "Trust Funds" are claimed by more than one party, the Designated Broker must promptly provide written notification to all contracting parties to a real estate transaction of the intent of the Designated Broker to disburse client funds. The notification must include the names and addresses of all parties to the contract, the amount of money held and to whom it will be disbursed and the date of disbursement that must occur no later than 30 consecutive days after the notification date.

This responsibility can be delegated in writing to a Branch Manager or a Managing Broker in writing in their log of assignments. The Designated Broker is always ultimately responsible for duties delegated.

The Designated Broker is required to keep accurate trust account records. These include:

- Duplicate recording of all receipts, sequentially numbered checks with check register, cash disbursements journal or check stubs
- Client's accounting ledger summarizing all monies received and disbursed for each real estate or business opportunity transaction, property mgmt account or mortgage collection account with separate ledger sheets
- Reconciled bank statements and canceled checks

The Designated Broker with regards to client money must according to WAC 308-124C-125:

- Ensure monthly reconciliation of trust account bank records are completed, up to date and accurate
- Ensure that the trial balance and the reconciliation show the account(s) are in balance
- Ensure policies or procedures are in place to account for safe handling of customer or client funds or property

Time limits for delivery of client funds must be adhered to under WAC 308-124E-100. All Brokers and managing Brokers will deliver or transmit all records agreements and funds to the appropriate Managing Broker, Branch Manager or Designated Broker within the SHORTER of the following:

- Two business days (not Saturday, Sunday or legal Holidays) or
- Sooner if the written terms necessitate quicker delivery.

All checks received as Earnest Money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property of business opportunities shall be made payable to the real estate firm as licensed unless it is mutually agreed in writing that the deposit shall be paid to the lessor, the seller, or an escrow agent named in the agreement. The Designated Broker shall retain a copy of the written agreement.

## Administration of Funds Held in Trust

### **General Procedures WAC 308-124E-105**

The Designated Broker is responsible for the administration of trust funds and account including:

- Depositing
- Holding
- Disbursing
- Receipting
- Posting
- Recording
- Accounting to Principals
- Notifying Principals and cooperating licensees of material facts
- Reconciling and properly setting up a trust account.

Bank account must be Designated as trust account with firm or assumed name. Interest must be recorded, there must be an audit trail of all funds, the Designated Broker is responsible for all funds, funds must be deposited not later than the first banking day after receipt, funds shall be in a permanent record, funds must identify the source and transaction, client's ledger sheets must show any funds, all credit entries must be identified (i.e. earnest money, down payment, rent, interest, etc), the bank account balance must balance, there must be a trial balance, disbursements shall be made by check or electronic transfer specifying the transaction, deposits must be verified before disbursements made, wire transfers must have hard copy, wire transfers must have copy of instructions in files, voided checks on the trust account shall be defaced and retained, commissions paid to another firm may come from trust account.

Disbursements from the trust account must pertain to a specific real estate transaction. No disbursements from the trust account are to be made in payment of a commission owned to licensees or for business expenses or bank charges.

The Designated Broker is responsible for handling the trust funds according to WAC 308-124C-125

### **Trust funds held for Real Estate or Business Opportunity WAC 308-124E-110**

Trust account bank accounts, deposit slips, checks and signature cards must have the firm or assumed name as licensed. The accounts are to be interest bearing. The firm shall maintain a pooled interest-bearing trust account identified as the housing trust fund account for deposit of trust funds \$10,000 or less. Interest from this account is paid to the DOL. The licensee shall disclose in writing to parties depositing more than \$10,000 that they have an option to have it in a separate interest-bearing trust account with the interest paid to that party or in the pooled interest-bearing account.

A separate check drawn on the trust account is made payable to the firm as licensed for each commission after the final closing.

No disbursement shall be made in advance of closing to any person for any reason without a written release from both the purchase and seller; except that:

- If the agreement terminated according to its own terms prior to closing, disbursement of funds shall be by the agreement without a written release and
- Funds may be disbursed to the escrow agent Designated in writing by the purchase and seller to close the transaction reasonably prior to the date of closing in order to permit checks to clear.

# Audits

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

## During an audit, the auditor will:

- Review the law about controlling interest in a real estate business with the Designated Broker or representative.
- Observe business signage and advertising, including, but not limited to letterhead, business cards, and promotional items.
- Examine the licenses of the firm, Designated managing Broker, managing Brokers, and Brokers to verify:
  - The licenses are current and up to date.
  - The licenses are available to the public.
  - The license names are used properly.
- Verify that the firm's Master Business License and Uniform Business Identifier (UBI) numbers match the DOL license.
- Verify controlling interest in the firm.
- Verify all assumed (DBA) names.
- Review the firm's written policy/procedures manual and delegations of authority.
- Confirm that any civil or criminal actions have they been reported to the Department of Licensing (DOL).
- Determine if the office is a main office, a branch, or the only office for the firm.
- Determine where branch office records are kept.

Review Brokerage transaction files within the last 3 years, including:

- Log files
  - Listing agreements
  - Closed and pending purchase and sale contracts, including addenda special agreements and attachments
  - Failed sales
  - Relationship disclosures for dual agency
  - Mutual agreement dates
  - Closing statements
  - Earnest money receipts (delivery of earnest money) for both listing and sales files
  - All other documents and correspondence related to transactions
  - Reviews of Brokerage service contracts involving any affiliated licensee with less than 2 years' experience.
- Review and reconcile Brokerage trust accounts, including owners, tenants, associations, and earnest money accounts. The auditor will generally examine bank records for all trust accounts for the 3 months before the audit. However, he or she may request up to 3 years of records if necessary. The audit may review the following records:
    - Bank statements
    - Pre-numbered check stock
    - Canceled checks (back and front)

- Deposit slips (receipted by bank)
  - Wire transfer confirmations
  - Voided checks (defaced)
  - Check registers or other records of receipts and disbursements.
  - Brokerage trust account reconciliations.
  - Property Management trust accounts corresponding invoices or receipts (to verify actual expenses).
  - Ledgers (liabilities)
- Examine a sample of management agreements to verify that agreements are signed by both the Designated managing Broker and the property owner.
  - Review current Brokerage (firm) to owner property management agreements to make sure they comply with state laws and rules.
  - Examine a sample of leases or rental agreements, and compare the security deposit liability in the lease/rental agreement to the liability in the security trust account.
  - Review current tenant leases for compliance with state laws and rules.

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

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

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

The Designated Broker should immediately start correcting any problems found in the audit.

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

# Property Management Activities

Real Estate Licensees cannot perform property management services without approval of their Designated Broker. Property management services include the following activities: marketing, administrative, or financial maintenance of real property; or the supervision of such actions.

## **WAC 308-124D-215 Management agreements and disclosures (WAC 308-124D-215)**

All properties managed by the firm must be supported by a written management agreement signed by the owner and Designated Broker and retained. The management agreement must state at a minimum:

- The firm's compensation;
- The type (i.e., apartments, industrial) and number of individual units in the project or square footage (if other than residential);
- Whether or not the firm is authorized to collect funds and disburse funds and for what purposes;
- Authorization, if any, to hold security deposits and the manner in which security deposits may be disbursed; and
- The frequency of furnishing summary statements to the owner.

All properties rented or leased by the firm must be supported by a written rental or lease agreement. Each owner of property managed by the firm must be provided a summary statement as provided in the property management agreement for each property managed showing: (The Designated Broker is to retain a true copy of this statement.)

- Balance carried forward from previous summary statement.
- Total rent receipts.
- Owner contributions.
- Other itemized receipts.
- Itemization of all expenses paid.
- Ending balance.
- Number of units rented or square footage if other than residential.

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

Any amendment or modification to the property management agreement must be made in written form and signed by the owner and the Designated Broker and retained.

## Administration of funds held in trust (WAC 308-124E-115)

Trust bank accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285. However, interest-bearing accounts for property management transactions may be established as described in this section.

- Interest-bearing trust bank accounts or dividend-earning investment accounts containing only funds held on behalf of an individual owner of income property managed by the firm may be established when directed by written property management agreement or directive signed by the owner: Provided, That all interest or earnings shall accrue to the owner;
- Interest-bearing trust bank accounts containing only damage or security deposits received from tenants of residential income properties managed by the firm for an individual owner may be established by the Designated Broker when directed by written
- management agreement, and the interest on such trust bank accounts Designated a "representative of the landlord" under the provisions of RCW 59.18.270, Residential Landlord-Tenant Act;
- The Designated Broker is not required to establish individual interest-bearing accounts for each owner when all owners assign the interest to the firm;
- A common account, usually referred to as a "clearing account" may be established if desired. This account must be a trust account.

Any property management accounting system is to be an accounting of cash received and disbursed. Any other method of accounting offered to owners for their rental properties, unit and/or complexes are to be supplementary to the firms accounting of all cash received and disbursed through the firms trust account(s). All owners' summary statements must include this accounting.

The preauthorization of disbursements or deductions by the financial institution for recurring expenses such as mortgage payments on behalf of the owner is not permitted if the account contains tenant security deposits or funds belonging to more than one client.

A single check may be drawn on the real estate trust bank account, payable to the firm as licensed, in payment of all property management fees and commissions, if such check is supported by a schedule of commissions identified to each individual client. Property management commissions shall be withdrawn at least once monthly.

No disbursements from the real estate trust bank account shall be made of funds received as damage or security deposit on a lease or rental contract for property managed by the firm to the owner or any other person without the written agreement of the tenant, until the end of the tenancy when the funds are to be disbursed to the person or persons entitled to the funds as provided by the terms of the rental or lease agreement.

When the management agreement between the owner(s) and the firm is terminated, the owner(s) funds shall be disbursed according to the agreement. Funds held as damage or security deposits shall be disbursed to the owner(s) or successor property manager, and the tenants so notified by the disbursing firm consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act.

# The Landlord Tenant Act

Knowledge of the Landlord-Tenant Act is imperative for any real estate agent that at any time gets involved in property management in any way in the STATE of WASHINGTON. It is known as the Residential Landlord-Tenant Act of 1973 and can be found in RCW 59.18. A full copy of the law is available from the Department of Licensing.

## A Summary of the Landlord Tenant Act

The following is a summary of the major provisions of the act. It is important to review the law in its entirety to know all the provisions.

## Rights and Remedies

Every duty under this chapter and every act, which must be, performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

## Definitions

This section defines dwelling unit, Landlord, person, owner, premises, rental agreement, single family residence, tenant and reasonable attorney's fees.

## Exemptions from the Landlord Tenant Act

The following are exempted from the Act.

- Institutions, public and private, where residence is incidental to detention or the provision of medical or similar services.
- Occupancies under bona fide purchase money agreement or option to buy.
- Transient lodging including hotels, motels, etc.
- A family residence incidental to the lease of agricultural land.
- Housing for seasonal agricultural employees.
- A tenant who's right to occupancy is dependent upon his employment.
- Space in a mobile home park.
- Tenants who lease a single family dwelling for one year or more, who have had their attorney approve the exemption.
- Property used for commercial purposes.

*Does the law cover tenant leases of retail space in a strip mall?*

*Give an example of a rental property that is exempt from the law?*

# Responsibilities of Landlord

## Landlord's Duties include the following:

- The landlord shall at all times keep the premises fit for human habitation.
- Maintain the premises to substantially comply with all state and local statutes and codes.
- Maintain all structural components.
- Keep any shared or common areas reasonably clean and safe.
- Provide for the control of insects, rodents, and other pests, except in a single-family residence.
- Make repairs where not attributed to normal wear and tear.
- Provide the tenant with locks and keys.
- Maintain all electrical, plumbing, heating and other facilities and appliances supplied by the landlord.
- Maintain the dwelling in a reasonably weather tight condition.
- Provide garbage cans and arrange for the regular removal of waste, except in the case of single family residences.
- Provide facilities adequate to supply heat and water as reasonably required by the tenant.
- Provide working smoke detection devices at move in, and a smoke alarm notice signed by both landlord and tenant.
- Provide the tenant written notice of the name and address of the person who is the landlord. Immediately notify the tenant by certified mail of any change of landlord.
- Designate an agent who resides in the county where the premises are located if the landlord resides out of state.

## The Landlord shall not:

- Intentionally shut off a tenant's utilities.
- Lock out a tenant.
- Confiscate a tenant's personal property.
- Enter the premises without proper notice, except in an emergency
- Attempt to physically remove a tenant from the premises.
- Threaten a tenant with a firearm or other deadly weapon.
- Attempt to evict a tenant who has been a victim of on-site threats or violence.
- Rent property, which has been condemned or could be deemed unlawful to occupy due to code violations.

*If the tenant is behind on the rent, can the landlord refuse to pay the utilities so they are turned off until the rent is paid?*

*If after the tenant moves into the unit there is an infestation of cockroaches, is the tenant or the landlord responsible? What if the infestation is due to fleas most likely from the tenant's pet? Give three examples of actions a landlord can and cannot take under this law.*

# Responsibilities of the Tenant

## The Tenant shall have the following duties:



- Pay the rental amount at such times as required by the rental agreement.
- Conform to all reasonable obligations or restrictions that are noted at initial occupancy or mutually agreed upon after property notice by the landlord.
- Comply with all obligations imposed by municipal, county and state codes, statutes, ordinances, and regulation.
- Keep the rental unit clean and sanitary.
- Properly dispose of all waste and eliminate infestation caused by tenant.
- Properly use all fixtures and appliances supplied by the landlord.
- Leave the premises in as good a condition as it was at the beginning of the tenancy except normal wear and tear. Tenants are responsible for any damages they have caused.
- Maintain the smoke detector, including battery replacement.
- Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligation. The tenant shall not be charged for normal cleaning if the tenant has paid a nonrefundable cleaning fee.

#### **The tenant shall not:**

- Intentionally and maliciously damage, destroy or remove any part of the structure, equipment, furniture or appliances, nor permit any other person to do so.
- Permit a nuisance or destroy property.
- Unreasonably withhold consent from the landlord to enter the dwelling unit within 24 or 48 hours of a written notice.
- Engage in drug related activity or allow anyone else to engage in drug related activity at the rental property.
- Engage in any activity on the rental property, which is:
  - Hazardous to the physical safety of other persons
  - Involves physical assaults upon another person which results in an arrest
  - Involves the use of a deadly weapon, which results in an arrest.

*In a multi-family living situation, who is responsible for the common areas?*

*When a landlord needs to check on the property, how much notice must be given to the tenant? Does this change if there is a life or property in danger? Give three examples of actions that a tenant can and cannot take under this law.*

### **Rental Agreements**

If the landlord collects money as a deposit, the Rental Agreement must be in writing. Both the Rental agreement and written checklist detailing the cleanliness and condition must be signed and dated by the landlord or his agent and the tenant. A copy must be given to the tenant before the tenant moves into the unit.

### **Month to Month Tenancy**

An oral or written agreement may establish a month to month tenancy, which continues indefinitely until either party terminates the agreement with

proper written notice.

## **Lease**

This is a written contract for the tenant to occupy the rental unit for a specified period of time, during which rent will be paid. Both the landlord and the tenant are bound to the terms of the lease during the period of the lease. The tenancy will terminate automatically at the end of the specified period of time.

## **Waiver of Rights**

The rental agreement between the landlord and the tenant cannot

- Force the tenant to waive any legal rights or remedies.
- Allow the landlord to sue the tenant without notice.
- Force the tenant to pay attorney's fees, except those fees authorized by law.
- Allow the landlord to confiscate the tenant's property without a written agreement signed by the tenant.
- Designate a particular arbitrator.

## **Rules of Tenancy**

A landlord may change the rules of tenancy in a month to month tenancy by giving the tenant a written notice of the change at least 30 days before the end of the rental period.

## **Rent Increases**

The landlord is required to give tenant written notice at least 30 days prior to the end of the rental period of an increase in rent in a month to month tenancy.

## **Handling fees and deposits**

### **Application Fee/Holding Deposit**

1. Collection of a fee for a waiting list is illegal.
2. The landlord must provide an applicant with a receipt for any funds received to hold the unit and must provide a written statement of condition, if any, under which there will be a refund.
3. If the tenant does occupy the unit, the landlord must apply the holding deposit to the first month's rent or security deposit.
4. If the tenant does not occupy the unit, the landlord must process the deposit in accordance with the written statement provided to applicant at the time the deposit was made.
5. This holding deposit must not include any fee charged by the landlord to run an application check.
6. The landlord may charge the applicant for the actual cost of tenant screening process.
7. The landlord must provide the applicant with a written explanation of the screening process and the applicant's right to dispute the accuracy of

the screening.

8. A portion of the fee or deposit may NOT be withheld if the unit fail a tenant based rental assistance program inspection within 10 days,
9. If during tenancy the unit is foreclosed upon and the tenants deposit is not transferred to the successor, the foreclosed upon owner shall promptly refund the deposit or be liable up to two times the deposit amount.

### **The Landlord Must:**

1. The landlord must provide a receipt for any payment made by tenant in cash and a receipt, if requested, for any made by tenant other than cash.
2. The landlord must provide an executed copy of rental agreement to each tenant who signs. The tenant can request one free replacement copy during tenancy.
3. The landlord must have a written rental agreement and a written checklist specifically describing the condition and cleanliness of or existing damages to the premises signed by the tenant in order to collect a deposit.
4. Describe all terms and conditions under which a deposit may be withheld.
5. Deposit all money received from the tenant in a trust account with a bank or licensed escrow company.
6. Give the tenant a receipt for any money deposited with landlord. The receipt must indicate the location of the trust account. The tenant must be informed in writing of any change in the account's location.
7. Mail any money due the tenant from the deposit to the tenant within 14 days of the tenant vacating the rental unit. Any money withheld must be specifically accounted for to the tenant.
8. Not withhold a deposit for normal wear and tear resulting from ordinary use of the rental unit.
9. Refund the total deposit to the tenant, including reasonable attorney's fees, if landlord does not comply with these deposit requirements.

### **Deposit and Fees**

1. **Any non-refundable money paid to the landlord must be called a fee**, and it must be clearly stated in the Rental Agreement that is it non-refundable.
2. A landlord may not take money in the form of a deposit and/or fee from a tenant without a written rental agreement.
3. If any part of a deposit can be withheld as damages, it must be clearly stated as such in the Rental Agreement.

*Does the rental agreement change upon expiration of the lease if there is no agreement to continue with a month-to-month tenancy? Can a landlord charge a screening fee if he does the screening himself?*

## **Repairs**

1. The tenant must give the landlord written notice of any requested repairs to the rental unit.
2. The tenant must allow the landlord a reasonable amount of time to perform the requested repairs. A reasonable amount of time will vary depending on the type of repair requested, but the general time periods are as follows:
  - a) 24 hours if the repair involves heat, water or a hazardous condition.
  - b) 24 hours to restore hot water or electricity.
  - c) Not more than 72 hours if the defective condition deprives the tenant of the use of the refrigerator, range and oven, or a major plumbing fixture supplied by the landlord.
  - d) 10 days to begin to make repairs in other cases.
3. Either the landlord or the tenant may notify local health or building department of possible health or building code violations.

4. If a tenant's rent is current and all utilities are paid, a tenant may consider one of the following courses of action if the landlord fails to repair a defective condition within a reasonable period of time following written notice from the tenant outlining the needed repairs.
- a. The tenant can give written notice and move out immediately without forfeiting any deposit.
  - b. The tenant may make the repairs and deduct the expense from the rent. If the required repair work needs to be completed by a licensed repairman, or will not exceed two months rent the tenant may:
    1. Obtain a bid from licensed repairman and give to landlord.
    2. The bid can be given to landlord when written notice of defect given.
    3. If the repairs still are not started within a reasonable period of time following written notice, the tenant may contract with the low bidder to have work done.
    4. The tenant must make arrangements to pay for the completed work.
    5. The tenant must give the landlord an opportunity to inspect the work.
    6. The tenant can deduct the cost of repairs from the next month's rent, but the deductions cannot exceed two months rent in any year.
    7. If the cost of repair does not exceed one month's rent and the landlord fails to start the repairs in reasonable period of time, the tenant may complete the repairs in a workman like manner. The tenant can repair broken locks after notice has been given to the landlord. If a lock is replaced, the tenant must give the landlord the new keys. The tenant may deduct the cost of these types of repairs from the next month's rent after allowing the landlord an opportunity to inspect the work. The tenant may not deduct more than the cost of repair or one month's rent, whichever is less in any year.
5. In the case of a serious defect, a court or arbitrator may determine that rent should be reduced until the defect is repaired.

*As a landlord how do you handle a leak under the faucet in the bathroom differently than a faulty hot water tank? A broken dishwasher vs. a broken furnace?*

*If the tenant breaks the water heater, how should the landlord respond and how does the cost of repair get handled?*

### **Tenant's Right to Privacy**

1. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.
2. In cases of emergency, abandonment or with 48 hours notice to inspect, a landlord does not have a legal right to enter the rental unit of a tenant without the consent of the tenant.
3. In order to show a rental unit to a prospective tenant or purchaser, a landlord must give the present tenant written notice 24 hours in advance. A tenant must not unreasonably refuse the landlord access to the rental unit to inspect, make repairs or supply services or show prospective tenants.
4. A landlord cannot use the right to enter the unit to harass the tenant.
5. A landlord has the right to enter the unit only at a time of day reasonable to tenant.
6. A landlord must give two days written notice except in cases of emergency. The notice must state the exact time and date of entry and a period of time when entry will occur. The notice must specify the phone number so tenant can communicate any objection or request to reschedule the entry.

### **Tenant's Personal Property**

Any provision in a rental agreement creating a lien upon the personal property of the tenant is not legal. Any landlord who takes or detains the personal property of the tenant without the specific written consent of the tenant may be liable for damages of up to \$100 per day.

## **Property left when tenant abandons property**

In cases of abandonment, the landlord may enter and take possession of any property.

1. If the property has an accumulative value of \$50.00 or less, excluding personal effects, the landlord may sell the property 7 days after a notice of sale is mailed to the tenant.
2. Property valued over \$50.00 must be stored for 45 days, after which it may be sold.
3. The property need only be stored in a reasonably secure place and the tenant notified promptly that it is stored.
4. The tenant must pay the actual moving and storage costs before the stored property may be claimed.
5. Notice of any intended sale of the property must be mailed to the tenant.
6. Income from the sale of any property may be used to cover money due the landlord, including moving and storage costs.
7. Any excess funds derived from the sale of a tenant's property shall be held for one year and after one year those funds belong to the landlord.

## **Retaliation**

1. A landlord cannot retaliate against a tenant for reporting code violations or exercising any other rights under the Landlord Tenant Act.
2. Retaliatory actions include unlawful eviction, rent increases, reduction of services, or expanding a tenants rental obligation.
3. Such acts by a landlord within 90 days from a tenant's exercise of rights under the Landlord tenant act is considered to be retaliatory.
4. A complaint made by a tenant to a governmental agency within 90 days of a proposed rent increase or other action by the landlord, taken in good faith, is considered to be retaliatory.

# **Termination of Tenancy**

## **By Tenant**

Giving the landlord or his agent written notice 20 days before the end of the rental period may terminate a month to month tenancy.

## **Due to Threatening Behavior by a Tenant**

1. Any law enforcement agency, which arrests a tenant for threatening another tenant with a deadly weapon or assaulting another person on the premises, will make a reasonable attempt to notify the landlord of the arrest.
2. A tenant may breach a rental agreement and will not be responsible for the payment of any rent after the unit is vacated if the tenant notifies the landlord in writing, that he has been threatened by another tenant, and;
  - a) The threat was made with a deadly weapon, and
  - b) The tenant who made the threat was arrested, and
  - c) The landlord does not file an unlawful detainer action against the other tenant within seven days after receiving notice of the arrest.
3. A tenant who vacates under the above condition is entitled to a pro rata refund of any prepaid rent.
4. In the case of assault and arrest by a tenant, the landlord is not required to terminate that tenant's rental or file an unlawful detainer action.

## **By Landlord**

1. Landlord may terminate month to month tenancy, with or without cause, by giving tenant written notice 20 days before end of the rental period.
2. A tenancy may be terminated before the end of the rental period if both parties agree.
3. A landlord may terminate a tenancy on shorter notice in the following situations”
  - a) Failure to pay rent (3 days notice)
  - b) Breach of rental agreement or lease (10 days notice)
  - c) Destruction of property, causing a nuisance, conducting an illegal business on the premises (3 days notice)
  - d) Trespassing (3 days notice) Note: it is a crime for a person to remain unlawfully in a rental unit.

## **Eviction and Unlawful Detainer**

A landlord cannot physically remove a tenant from a rental unit for any reason until the following process is complete;

The landlord prevails in an unlawful detainer action to evict the tenant.

The court issues a Writ of Restitution directing the Sheriff to remove the tenant.

Unless a tenant objects, property removed from the unit under the supervision of the Sheriff will be stored and the tenant will be liable for moving and storage costs.

## **Order for Protection**

If a tenant notifies the landlord in writing that he or she has a valid order for protection and the person to be restrained has violated the order the tenant, after notifying the police, may terminate the rental agreement and is entitled to a prorata refund of any prepaid rent.

## **Abandonment**

If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for such abandonment occurs whenever a tenant fails to pay rent and indicates by words or action an intention not to continue the tenancy. If a tenant abandons the rental unit, the landlord must immediately attempt to re-rent the unit. A tenant who abandons a rental unit may be liable for one month's rent, if the tenancy was a month to month, or the remainder of the rent due if rented for a fixed term. Rent due from a tenant who has abandoned a unit will be reduced by the amount of rent received from a new tenant.

## **Drug Related Activity or use of deadly weapon**

If a tenant or resident or anyone else engages in drug-related activity at the rental premises or is arrested for use of a deadly weapon or physically assaults a person on the rental premises the rental agreement or lease can be terminated. The process commences with an unlawful detainer suit.

Any law enforcement agency, which seizes illegal drugs from a tenant or arrests a tenant, must make a reasonable attempt to notify the landlord of the seizure. A landlord can claim compensation from any law enforcement agency for property damaged during a drug raid from the seized assets of the tenant if an unlawful detainer suit is filed within 7 days after the police gave notice of tenant's illegal activity. One exception to this policy is if the landlord had knowledge of the illegal activity.

*Discuss the different ways that a rental agreement can be terminated.*

*How does the landlord know if the tenant has abandoned the property?*

*Does the landlord have grounds for eviction if there has been a drug raid and no illegal drugs were found at the property and there were no arrests of the tenants?*

## **Foreclosure and Tenancy**

New legislation in Washington State passed effective in July 2009 to protect and notify tenants in property that are going into foreclosure.

Tenants in non-owner-occupied one- to four-unit residences must be notified at least 90 days in advance of the impending foreclosure sale, of the potential consequences to them, and their option to contact a lawyer, legal aid, or a housing counselor about their rights. Tenants living in foreclosed property must be given 60 days' written notice by the new owner before tenants are removed from the property.

This new change to 60 days is only good for tenants occupying a home that was sold during foreclosure. If a homeowner is occupying the foreclosed property, they will have to vacate in 20 days.

It would be wise for any tenant to do a check on the landlord while the landlord does a check on them!

## **Enforcement**

The district or superior courts may exercise jurisdiction with respect to a claim against a landlord or a tenant. The defendant must be served with notice. There are alternate means if service cannot be done in person. The summons and complaint shall be posted on the premises not less than 9 days from the return date in the summons. Copies of the summons and complaint shall be sent by both regular and certified mail to defendant's last known address.

## **Settling of disputes**

Sources of help for settling disputes between landlords and tenants include:

1. Legal services. Low-income people may contact the nearest community action committee.
2. Small Claims Court. Disputes are heard without attorneys regarding retrieval of deposits, back rent and damages less than \$2500.
3. Arbitration. A neutral third party is chosen by landlord and tenant and can arbitrate any disputes except those requiring immediate relief or disputes already subject to litigation.

# The Uniform Regulation of Business and Professions Act

The Washington State Legislature has passed the Uniform Regulation of Business and Professions Act RCW 18.235. It was the intent of the legislature to consolidate disciplinary procedure for the licensed businesses and professions under the Business and Professions division of the Department of Licensing by providing a uniform disciplinary act with standardized procedures for regulation and enforcement of laws. The purpose is to assure the public of the adequacy of business and professional competence and conduct. It gives a consistent disciplinary process and standards of conduct for all persons and entities licensed with Business and Professions.

## **Disciplinary Authority**

Once you have a real estate license you are under the regulations and laws as passed by the Washington State Legislature. The Department of Licensing under the Uniform Regulation of Business and Professions Act has the Authority to investigate and audit real estate agents and Brokers.

### **RCW 18.235.030 disciplinary authority has the power to:**

- (1) Adopt, amend, and rescind rules as necessary to carry out the purposes of this chapter, including, but not limited to, rules regarding standards of professional conduct and practice;
- (2) Investigate complaints or reports of unprofessional conduct and hold hearings as provided in this chapter;
- (3) Issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;
- (4) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;
- (5) Compel attendance of witnesses at hearings;
- (6) Conduct practice reviews in the course of investigating a complaint or report of unprofessional conduct, unless the disciplinary authority is authorized to audit or inspect applicants or licensees under the chapters specified in RCW 18.235.020;
- (7) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice or business pending proceedings by the disciplinary authority;
- (8) Appoint a presiding officer or authorize the office of administrative hearings, as provided in chapter 34.12 RCW, to conduct hearings. The disciplinary authority may make the final decision regarding disposition of the license unless the disciplinary authority elects to delegate, in writing, the final decision to the presiding officer;
- (9) Use individual members of the boards and commissions to direct investigations. However, the member of the board or commission may not subsequently participate in the hearing of the case;
- (10) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;
- (11) Grant or deny license applications, secure the return of a license obtained through the mistake or inadvertence of the department or the disciplinary authority after providing the person so licensed with an opportunity for an adjudicative proceeding, and, in the event of a finding of unprofessional conduct by an applicant or license holder, impose any sanction against a license applicant or license holder provided by this chapter;
- (12) Designate individuals authorized to sign subpoenas and statements of charges;
- (13) Establish panels consisting of three or more members of the board or commission to perform any duty or authority within the board's or commission's jurisdiction under this chapter; and
- (14) Contract with licensees, registrants, endorsement or permit holders, or any other persons or organizations to provide services necessary for the monitoring or supervision of licensees, registrants, or endorsement or permit holders who are placed on probation, whose professional or business activities are restricted, or who are for an authorized purpose subject to monitoring by the disciplinary authority. If the subject licensee, registrant, or



endorsement or permit holders may only practice or operate a business under the supervision of another licensee, registrant, or endorsement or permit holder under the terms of the law regulating that occupation or business, the supervising licensee, registrant, or endorsement or permit holder must consent to the monitoring or supervision under this subsection, unless the supervising licensee, registrant, or endorsement or permit holder is, at the time, the subject of a disciplinary order.

### **Sanctions under the Act**

“Sanctions” are the penalties imposed by the Department of Licensing for violations of the Laws and Rules. This is what can happen as punishment after the disciplinary or hearing process.

### **RCW 18.235.110 Sanctions**

Under the Department of Licensing finds that a real estate agent’s conduct has been unprofessional, the Department under the Uniform Regulation Act has the authority to protect the public by any combination of the following:

- (a) Revocation of the license for an interval of time;
- (b) Suspension of the license for a fixed or indefinite term;
- (c) Restriction or limitation of the practice;
- (d) Satisfactory completion of a specific program of remedial education or treatment;
- (e) Monitoring of the practice in a manner directed by the disciplinary authority;
- (f) Censure or reprimand;
- (g) Compliance with conditions of probation for a Designated period of time;
- (h) Payment of a fine for each violation found by the disciplinary authority, not to exceed five thousand dollars per violation. The disciplinary authority must consider aggravating or mitigating circumstances in assessing any fine. Funds received must be deposited in the related program account;
- (i) Denial of an initial or renewal license application for an interval of time; or
- (j) Other corrective action.

(2) The disciplinary authority may require reimbursement to the disciplinary authority for the investigative costs incurred in investigating the matter that resulted in issuance of an order under this section, but only if any of the sanctions in subsection (1)(a) through (j) of this section is ordered.

(3) Any of the actions under this section may be totally or partly stayed by the disciplinary authority. In determining what action is appropriate, the disciplinary authority must first consider what sanctions are necessary to protect the public health, safety, or welfare. Only after these provisions have been made may the disciplinary authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

(4) The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct. The stipulations entered into under this subsection are considered formal disciplinary action for all purposes.

## **Unprofessional Conduct Defined**

Though unprofessional conduct can humorously be considered in real estate as having an old dirty car or wearing a polyester leisure suit, it is taken very seriously under the Washington State Laws. License laws are created to protect the consumer from actions by real estate agents that could result in damage to the consumer.

This is the definition of Unprofessional Conduct under the Uniform Regulation of Business and Professions Act.

## **RCW 18,235.130 Unprofessional Conduct**

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;
- (2) Misrepresentation or concealment of a material fact in obtaining or renewing a license or in reinstatement thereof;
- (3) Advertising that is false, deceptive, or misleading;
- (4) Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;
- (5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;
- (6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:
  - (a) Not furnishing any papers or documents requested by the disciplinary authority;
  - (b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;
  - (c) Not responding to a subpoena issued by the disciplinary authority, whether or not is the accused in the proceeding; or
  - (d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;
- (7) Failure to comply with an order issued by the disciplinary authority;
- (8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);
- (9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;
- (10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;
- (11) Misrepresentation in any aspect of the conduct of the business or profession;
- (12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

- (13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;
- (14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action; and
- (15) Engaging in unlicensed practice as defined in RCW 18.235.010.

In summary, the Department of Licensing that granted you a real estate license and has the disciplinary authority to audit and investigate your business and conduct

# Disciplinary Actions

Many complaints are received by the Dept of Licensing every year. The first step is to determine if it is under the Real estate Department and if the action could have violated a law or a rule.

Real estate agents, consumers and other stakeholders in the industry make complaints. If the department determines that the conduct warrants an investigation, they contact those involved and ask for an explanation. This can go on for over a year. If the Department of Licensing determines that there was a violation, they will send out a Statement of Charges. A hearing can be requested but they make it clear that it is only to discuss the sanctions. By not cooperating with an investigation, the Department can include charges that you didn't cooperate because that is a violation

There is a difference between the MLS rules and requirements, the REALTOR Code of Ethics and the Department of Licensing.

These are the most recent disciplinary actions currently posted.

## **February 2019**

Broker - Renton

- Findings: Unprofessional Conduct – Created and submitted fraudulent real estate offers.
- Actions:
  - Real Estate Broker License Revoked for 3 years.
  - Fined \$7,500 due to the department in 6 months of reapplying and issuance of Broker's license.

## **January 2019**

Broker - Pasco

- Findings:
  - Unprofessional Conduct – Creation and recording of new easement while in last stages of Real Estate transaction.
  - Failed to inform the Complainants.
  - Attempted to record easement without the knowledge of the Complainants to bring a high value for high commission.
- Action: Real Estate Broker License Revoked for 6 years.

## **December 2018**

Broker - Lynden

- Findings: Unprofessional Conduct – Submitting fake offers to artificially escalate purchase price on homes.
- Action: Real Estate Broker License Revoked for 10 years; and assessed a fine of \$5,000.

Broker - Seattle

- Findings: Unprofessional Conduct – Submitting fake offers to artificially escalate purchase price on homes.
- Actions:
  - Real Estate Broker License Suspended for 5 years, with 3 months to be imposed beginning October 1, 2018 through January 1, 2019, with the remaining 4 years and 9 months to be stayed for a period of 5 years starting on October 1, 2018.

- Pay a fine of \$15,000 to the Department by March 1, 2019.
- Can't apply for a Real Estate Managing Broker license during the 5 year stay.
- Must be under heightened supervision by his Designated Broker or Branch Manager until January 21, 2021.

Broker - Wenatchee/Republic

- Findings: Unprofessional Conduct – Forging signatures on real estate documents.
- Action: Real Estate Broker License Revoked for 3 years

Managing Broker - Tacoma

- Findings: Unprofessional Conduct – Judgment for security deposits and lease agreements
- Action: Real Estate Managing Broker License Revoked for 5 years.

**November 2018**

Broker - Vancouver

- Findings: Unprofessional Conduct - Convicted of theft in the first degree.
- Action: Real Estate Broker License suspended for 1 year, all stayed for 3 years; must be under heightened supervision by his designated broker or branch manager for 2 years.

Managing Broker - Seattle

- Findings: Unprofessional Conduct - Failure to produce required continuing education certificates.
- Action: Real Estate Managing Broker License suspended for 1 year, with 3 months imposed, with the remaining 9 months to be stayed for 3 years, and assessed a fine of \$1,000 due in 6 months; and assessed a fine of \$2,000 due in 90 days.

Broker - Marysville

- Findings: Unprofessional Conduct - Convicted of indecent liberties and third degree rape.
- Action: Real Estate Broker License revoked for 5 years.

Broker - North Bend

- Findings: Unprofessional Conduct - Audit irregularities with trust accounts, recordkeeping issues, and mishandled property management deposits.
- Actions: Real Estate Broker License suspended for 1 year, all stayed for period of 3 years; and must:
  - Pay a fine in the amount of \$2,500 within 6 months from effective date of order.
  - Successfully complete a minimum of 3 hour continuing education course in Agency Law.
  - Have her property management agreement reviewed by a licensed Washington attorney within 3 months from the effective order.
  - Obtain at her own expense an accountant to conduct the following review of her property management firm's accounting before January 31, 2019.
  - Reconcile all December 2018 firm bank statements with Respondent's check register and client ledgers.
  - Conduct a random sample from 12 of Respondent's current rental agreements to confirm the security deposits on the rental agreement matches the security deposit ledgers.
  - Ensure the accountant provides to the Department a copy of the firm's reconciliation and copy of the list of 12 rental agreements reviewed on or before January 31, 2019.

**October 2018**

## Broker - Bellevue

- Findings: Unprofessional Conduct - Entering a listed home without permission.
- Action: Real Estate Broker License suspended for 1 year, all stayed for 3 years, and assessed a fine of \$1,000 due in 6 months.

**August 2018**

## Designated Broker - Bonney Lake

- Finding: Unprofessional Conduct - Audit irregularities with trust accounts, recordkeeping issues, and mishandles tenant security deposits.
- Action: Real Estate Designated Broker License revoked for 10 years; and assessed a fine of \$5,000 due within 90 days.

## Designated Broker - Belfair

- Finding: Unprofessional Conduct - Failure to use reasonable skill and care.
- Action: Real Estate Designated Broker License suspended for 1 year, 60 days actual, with remaining 305 days to be not imposed for a period of 3 years; and assessed a fine of \$1,500 due within 1 year.

## Designated Broker - Marysville

- Finding: Unprofessional Conduct - Judgment related to real estate.
- Action: Real Estate Designated Broker License suspended for 1 year all stayed for a period of 3 years.

## Broker - Republic

- Findings: Unprofessional Conduct – Falsified and forging signatures on real estate documents.
- Action: Assessed a fine of \$3,000.00 due to the department within 1 year.

# What is a Broker

## Quiz

You can use this quiz or put the answers on the answer sheet following. For Advanced Real Estate Practices you must complete and return this quiz along with the

- T / F 1. All responsibilities a Designated Broker delegates to a Managing Broker must be in writing.
- T / F 2. All real estate Salespersons will have the title of Broker, Managing Broker or Designated Broker.
- T / F 3. To obtain a Managing Brokers license, a Broker must take 120 hours.
- T / F 4. Only new real estate Brokers will be required to have fingerprint and background checks
- T / F 5. If you have been fingerprinted by another agency, it will automatically transfer to the Real Estate Department of Licensing.
- T / F 6. A real estate salesperson can use the title, Broker.
- T / F 7. A Designated Broker is to have controlling interest in a real estate firm.
- T / F 8. To become a Brokers it is required to take Fundamentals AND Practices before taking the exam.
- T / F 9. Contracts drafted by Brokers in RE for less than 2 years must be initialed by a Managing Broker delegated that responsibility.
- T / F 10. Designated Brokers can delegate responsibilities including balancing trust accounts to Managing Brokers.
- T / F 11. If you want to be a Designated Broker you are required to take a test, have experience, and own a Brokerage.
- T / F 12. The Department of Licensing will register Designated Brokers .
- T / F 13. In order to be a Branch Manager, a Broker must be a Managing Broker.
- T / F 14. A Branch Manager responsibilities must be delegated in writing by the Designated Broker of the Firm.
- T / F 15. For the first time, all real estate Firms will be required to have a license.
- T / F 16. The Designated Broker for a Firm must provide proof of ownership/ controlling interest.
- T / F 17. Only the Designated Broker can delegate responsibilities to a Managing Broker to supervise new Brokers.
- T / F 18. When a Designated Broker delegates responsibilities to a Branch Manager, the Designated Broker remains ultimately responsible.
- T / F 19. The Designated Broker can delegate responsibility for the handling of trust account records to a Broker.

- T / F 20. A Designated Broker or the Managing Broker with written duties, must initial all contracts by new Brokers within 5 days.
- T / F 21. All transaction records must be kept by the Designated Broker for 7 full years according to the Department of Licensing.
- T / F 22. Transaction files kept by the Designated Broker only need to contain the contract and the closing statement.
- T / F 23. A Managing Broker that leaves a firm must give the Designated Broker written notification of Termination.
- T / F 24. Termination can be conditions on the performance of some contract or payment of commission.
- T / F 25. All advertising by Brokers must have the Firm Name "clear and conspicuous."
- T / F 26. The firm name must be on all advertising done by a Broker.
- T / F 27. Any real estate transaction funds that a Broker exercises control over are considered "trust funds."
- T / F 28. A Designated Broker holding funds in trust can provide written notification to all parties and choose how to disburse funds.
- T / F 29. The Designate Broker is ultimately responsible for all trust funds that are held in the Firms separate bank account.
- T / F 30. A Firm's property management agreement must contain the type of property and the number of units.
- T / F 31. A team can advertise using an "assumed name" if the Designated Broker approves and registers the name with the Dept of Licensing.
- T / F 32. A Designated Broker is a Managing Broker with an "endorsement" from the Department of Licensing.
- T / F 33. A Designated Broker must have a written log of delegated assignments to Managing Brokers.
- T / F 34. A Broker can be delegated the responsibility to be a Branch Manager.
- T / F 35. If a fingerprint card is rejected, the licensee has 21 calendar days after written notice to submit a new card.
- T / F 36. When applying for a first time real estate license, an applicant must have a high school diploma or equivalent.
- T / F 37. New Brokers licensed less than 2 years must submit all contracts to the Designated Broker or delegate within 5 days.
- T / F 38. A Designated Broker can act as the Designated Broker for only one firm.
- T / F 39. All real estate records must be kept at an address or readily retrievable where the real estate Firm is licensed.



- T / F 40. The Designated Broker is required to keep all records available for the Department of Licensing for a minimum of 7 years.
- T / F 41. A written policy must be written by the Designated Broker regarding referral of home inspectors.
- T / F 42. All new Brokers after July 2010 will be required to take 90 clock hours of continuing education before their first renewal.
- T / F 43. The Core Curriculum class is required for all licensees for each renewal.
- T / F 44. Properties managed by a Firm or a Broker within a firm, must have a written management agreement.
- T / F 45. Real estate licensees cannot perform property management services without approval of their Designated Broker.
- T / F 46. Property management activities do not include marketing.
- T / F 47. Trust accounts are not exempt from the interest bearing requirement for housing trust fund accounts.
- T / F 48. Property used for commercial purposes is regulated under the Landlord/Tenant Act.
- T / F 49. A landlord is not required to install a working smoke detector when a tenant moves in.
- T / F 50. The rental agreement cannot force the tenant to waive any legal rights.

Please answer on the answer sheet on the following page.

## Section 1 What is a Broker?

### Answer Sheet

1		26	
2		27	
3		28	
4		29	
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A clockhour is 50 minutes. This section should have taken you near 4 hr 10 minutes. How long did it take you to complete?\_\_

I attest that I have read the materials and have answered the questions.\_\_\_\_\_

Scan this along with the other 5 sections AND the final test to receive clockhours for Advanced Practices.

**Date Course Started** \_\_\_\_\_ **Date Course Completed** \_\_\_\_\_

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

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PROFESSIONAL Direction

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