



# When are you an Agent?

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



***Please Read this First! Thanks!***

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1. You will be provided with a pdf booklet of with the class material. The booklet is for use for clockhours under Professional Direction. Any other use must be by permission only.
2. The course has been divided up into one hour sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
3. **Answer** the questions on the quiz answer sheet.
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5. **Scan and EMail** Answer Sheet and Evaluation to Professional Direction with tuition of \$40 for 5 hour class. There is a link to pay pal on the front of website. Choose Credit card option. You don’t need a paypal account.
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Disclaimer.. the course materials and questions are not to be used for legal advice. Information can change over time. Real estate transactions are handled different ways in different regions in the State of Washington. If you have any comments or concerns about the material contact Professional Direction.

Thanks!

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# When are You an Agent?

## Curriculum

<b>Session Hours</b>	<b>Major Topics</b>	<b>Method of Presentation</b>
1 1 hour	What is an Agent? Definitions in Law of Agency Creating Agency	Read material Answer Quiz
2 1 hour	Who the Agent Represents Duration of Agency Presumption of Buyer agency In house Transactions Transaction Specific	Read material Answer Quiz
3 1 hour	General Duties of the Agent Confidential Information Material facts	Read material Answer Quiz
4 1 hour	Duties of the Seller's Agent Duties of the Buyer's Agent. Dual Agency	Read material Answer Quiz
5 1 hour	Compensation Vicarious Liability Imputed Knowledge	Read material Answer Quiz

# When are you an Agent?

By Natalie Danielson

## Introduction

Understanding agency relationships is of critical importance to real estate agents. In January of 1997 The Law of Agency became a statute in Washington State. It changed the way we have defined agency and attempts to clarify relationships that are more in line with the practice of agency in the real estate industry. This course focuses on the law and the way it is implemented

This class is not meant to make interpretations of the Law of Agency. The real estate licensee is instructed to direct any questions to his or her designated broker or corporate attorney about the Law of Agency. The author is not an attorney.

Though the title of real estate salespersons has changed to Broker, Managing Broker and Designated Broker, all real estate brokers are all still real estate agents and fall under the Law of Agency.

## Objectives

As a result of taking this course the licensee shall be able to:

- Define agency relationships under the Washington State Law of Agency
- Know the definitions of terms in the Law of Agency.
- List the duties of an agent generally, as a buyer's agent, a seller's agent and a dual agent.
- Know the 5 exceptions to the presumption of buyer agency.
- Define "client" and "customer" relationships.
- Identify when the agency relationship commences and terminates.
- Know when to disclose agency
- Know when to provide a pamphlet to a consumer on the Law of Agency.
- Identify the relationship between compensation and agency.
- Know the terms "vicarious liability" and "imputed knowledge."
- Identify the disciplinary actions the Director of the Department of Licensing with regards to the Law of Agency.

## Section 1

# What is an Agent?

Agency is a conceptual relationship between two parties wherein one of them, the principal, employs or authorizes the other, the agent, to act for and on behalf of the principal. In most general terms, an agent is someone who represents the financial or property interests of another party. The agent may be empowered to do many of the things the principal could do or has chosen not to do personally.

There is no “single” common factor that creates an agency relationship. There is no one specific action, duty, or word that every real estate licensee would use that would undeniably create the relationship.

License laws originate in the individual states. There is no federal law or statute that all real estate licensees in the country must follow. Common laws based on lawsuits would direct the way agents practiced and the decisions the courts would make. Real estate agents had fiduciary duties to the principal.

Effective January 1, 1997, the Law of Real Estate Agency defined our role by statute in Washington State. The legislation defines the law of agency for real estate licensees in our state for the first time.

The basic objectives of the Agency law according to the Department of Licensing are to:

1. Clarify the law of agency as applied to real estate brokers.
2. Create presumptions of agency relationships with customers consistent with their natural expectations, while retaining some flexibility for alternate relationships. In the past we were presumed to represent the seller, but the buyers assumed that agents represented them when writing up a transaction. So, the presumption has flipped over to representing buyers.
3. Reduce instances of dual agency. Disclosure and discussion can help reduce unintended dual agency.
4. Limit the liability of brokers and agents under the doctrine of vicarious liability and imputed knowledge.

The agency law and duties apply to ALL real estate agents that work in other areas of real estate besides residential such as commercial agents, those that sell investment properties, property managers, and agents that specialize in business opportunities.

The terms “client” and “customer” are not used in the Law of Agency or defined legally. The term “client” has come to mean a party you represent in a transaction (i.e. your principal) and “customer” has come to mean a party with whom you deal in a transaction but that you do not represent. For example, when you are a listing agent, the seller is your client and the buyer is the customer.

### **Changes Effective July 2013**

A number of changes were made to definitions in the real estate brokerage agency chapter in 2013 to conform to the definitions in the chapter that provides licensing of persons and entities that perform real estate services.

Broker is defined to include broker, managing broker, and designated broker, as those terms are defined in the chapter providing licensing for real estate brokers and managing brokers. A definition of real estate firm (firm) is added.

Firm means a business entity licensed by DOL to conduct real estate brokerage services in this state. The definition of licensee is struck. Language changes are made throughout the act to conform to the changes in definitions.

The duties listed in the real estate brokerage agency relationship chapter are statutory duties, not fiduciary duties. The chapter supersedes all, not just inconsistent, common law fiduciary duties owed by a principal to an agent.

The provisions setting forth the formatting of the pamphlet and briefly summarizing the required subjects in the pamphlet are modified to reflect the changes in this act and the 2012 addition of the duty of a firm representing the seller of owner-occupied real property in a short sale.

In addition, there have been changes to the exceptions to the presumption of buyer agency.

### **Agency Law Amended**

Under the amended Law of Agency RCW 18.86.020 it states:

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

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

Make sure there is good disclosure. Agency disclosure is on the listing agreement and the buyer agency agreement.

## **REALTOR Association fought bill on Dual Agency**

The Washington State REALTOR association won a battle over dual agency that would have affected commercial transactions and ultimately would have had an impact on residential transactions as reported in the REALTOR Magazine in June 2019. The bill did not even make it to a vote in the Washington State Legislature. The bill sought to limit in-house transactions.

Dual agency has become a hot-button topic in real estate over the last few years. Critics argue there's a direct conflict of interest whenever a brokerage represents both a buyer and seller, while supporters say the practice connects buyers and sellers faster and eliminates much of the time-consuming aspects of a transactions.

## **Law of Agency Definitions**

The text of the Law of Agency includes 15 definitions of the terms used in the Law.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.

(2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

*It is important to note that the word "buyer" also means "tenant" in the law.*

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:  
(a) Was acquired by the licensee during the course of an agency relationship with the principal;  
(b) The principal reasonably expects to be kept confidential;

- (c) The principal has not disclosed or authorized to be disclosed to third parties;
- (d) Would, if disclosed, operate to the detriment of the principal; and
- (e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in Chapter 18.85.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

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

(12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

*It is important to note that transaction commences at the time an agreement is signed by one of the parties.*

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

*It is important to note that the word "seller" also refers to "landlord."*

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(15) "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents.

# Creating Agency Relationships

## **Agency can be created by express or implied agreement.**

An agency relationship can be created by contract or by conduct. Although the relationship must be voluntary, it can be created unintentionally or accidentally.

### **Express Agreement**

Agency can be created by oral or written agreement. Sometimes people assume that no agency exists unless there is a written agreement, but a written contract is NOT required to create an agency relationship.

What are the most common agency contracts we deal with as brokers?

*The most common agency agreements include the listing agreements and buyer agency contracts.*

### **Implied agreement**

Agency can be a result of words or conduct. Courts usually find implied agency where the intentions of the agent and the alleged principal are shown by their conduct and words.

The Law of Agency in Washington State creates the presumption of buyer agency when a licensee performs brokerage services for a buyer. The agency relationship is implied by the actions of the agent.

Could a licensee create an implied agreement with a party unintentionally?

*If a licensee was representing the seller in a transaction, the licensee could imply a relationship with a buyer by helping the buyer make decisions during a home inspection.*

### **Ratification and Estoppel**

An agency relationship can occur when the principal is aware that unauthorized actions are being taken on its behalf and the principal then does some act which endorses or ratifies the unauthorized actions giving the legitimacy in the eyes of other parties who might justifiably rely on the actions. It is considered agency "after the fact." A principal may not deny the existence of an agency relationship after accepting the benefits of the agent's "unauthorized" acts.

In Washington State, in order for a broker to enforce an agreement for commission on a real estate transaction, the agreement must be in writing according to RCW 19.36.010, the Statute of Frauds.

## Agency Relationship Definition

According to the Law of Agency the definition of “Agency Relationship” means:

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

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

## Brokerage Services

Chapter 18.85 RCW is the Real Estate License Law. Brokerage Services is defined under RCW 18.85.011 (16)

"Real estate brokerage services" means any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation, or by a licensee on the licensee's own behalf:

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

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

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

Summer 2015 the definitions of brokerage services will also include floating homes and floating on water residences.

# Who do You Represent and When?

## Commencing an Agency Relationship

When a licensee performs brokerage services as defined by the Real Estate License Law then the licensee is creating an agency relationship with a principal. That principal can be a seller, buyer, landlord or tenant.

“The Agency relationships set forth in the Law of Agency commence at the time that the licensee undertakes to provide real estate brokerage services to a principal.”

*Which of the following could be considered performing real estate brokerage services?*

- a. Showing property to prospective buyers.*
- b. Cold calling to neighbors about a new listing.*
- c. Serving a cup of coffee to a prospective buyer.*
- d. Answering questions from an ad call when on floor time.*
- e. Searching the MLS for properties for a buyer.*
- f. Negotiating a lease for a tenant.*
- g. Making repairs to a property that is for sale.*
- h. Discussing market value of a property with a seller.*

There is no exact answer as to when an agent is providing brokerage services because their actions and words could imply far more than the small examples given.

In the examples above, the agent could be performing brokerage services in (a), (b), (d), (e), (f) and (h). Serving coffee and making repairs are not actions that would require a real estate license.

## Buyer Agency

According to the Law of Agency, the agent is presumed to be a buyer's agent at the time he or she performs brokerage services. Therefore, when a prospective buyer walks into the door of the real estate office, when the agent performs brokerage services, the agent becomes an agent of the buyer.

This agency relationship is presumed. It does not have to be in writing. Though there are disclosure forms and buyer agency contracts used throughout Washington State which are wise to use to avoid unintended dual agency.

Amendments to the Law of Agency read:

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

Some agents read this as just checking the agency disclosure on the purchase and sale agreement. But, agency must be disclosed when the agent performs real estate brokerage services.

## Seller Agency

The most common written agreement creating an agency relationship with a seller is the Listing agreement. The listing agreement discloses agency to the seller.

## Who Do You Represent as an Agent?

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

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

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

### Exceptions to the presumptions

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

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

1. The licensee has entered into a written agency agreement with the seller, in which case the license is a seller's agent;
2. The licensee has entered into a subagency agreement with the seller's agent, in which case the licensee is a seller's agent;
3. Broker's firm has appointed broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the **broker's firm has appointed the broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer**, in which case the broker is a dual agent .
4. The licensee is the seller or one of the sellers; or.
5. The parties otherwise in writing after the licensee has complied with section 3(1) (f) of the act."

*Section 3(1) (f) is the requirement to provide a pamphlet on the Law of real estate agency.*

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

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*Know who you represent at all times. Make sure it is disclosed to all parties.*

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## Agency Confusion

For example, confusion could exist with the presumption of buyer agency.

The agent is sitting in an open house and discusses home buying and qualifying with a prospective buyer. The agent shows the buyer that property, as well as, the property for sale next door. Who does the agent represent?

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

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

*The agent could choose to only represent the seller and not the buyer. In that case, the buyer needs to waive his rights to agency according to the Law of Agency.*

*The agent could be sitting the open house as an opportunity to meet other prospective purchasers. In that case, the agent could represent the buyer.*

## Buyer Agreements

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

A written agreement with a buyer:

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

## In- House Transactions

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

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

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

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

Who does the Broker of the office represent? Doesn't the Broker represent the seller since there is a listing agreement?  
*No if there is dual agency. When the real estate office has a listing the agreement has a clause authorizing dual agency. If another agent under the Broker's supervision has an offer on the property for his or her clients and a written agency agreement, then the Broker becomes a dual agent. The listing agent represents the seller. The selling agent represents the buyer.*

## **Transaction specific agency relationships**

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

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

This situation could happen if a licensee represents a buyer on the sale of a house. Then the sellers decide that they want the same licensee to represent them in the purchase of their next home.

## **Terminating an Agency Relationship**

There are 5 ways to end an agency relationship according to the Law of Agency.

### **1. Completion of Performance**

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

### **2. Expiration of the Term**

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

### **3. Termination by Mutual Agreement**

There are times that the principal and the real estate agent mutually agree to terminate. For example, if a home that is listed does not sell, the seller and the agent may agree to stop working together. The seller may decide to list with another agent or take their home off the market completely. Or, a buyer and an agent after looking for properties for several weeks may choose not to continue working together.

### **4. Notice from one party to another**

There are times that the principal OR the agent do not want to continue the relationship. When working under a listing agreement, there is a term agreed upon. If one of the parties chooses to terminate the agency relationship and the agreement, there may be contractual issues that may have to be resolved. For example, the seller may be liable for damages or costs incurred by the listing broker should the seller choose to unilaterally revoke the agreement.

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

### **5. Operation of Law**

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

#### **Duties that survive agency**

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

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

# Duties of a Licensee

With the Law of Agency there are statutory duties prescribed for agents generally when working with the consumers.

## General Duties of a Licensee

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

1. “To exercise reasonable care and skill.”

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

2. “To deal honestly and in good faith.”

*The real estate licensee must at all times be truthful and consider the interest of the consumer.*

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

*It is important to note that if you have a listing that is sold pending; you must still present other offers. The seller cannot sign two agreements, of course, unless one is a back up or subject to the failure of the first offer. The real estate licensee has the responsibility to provide the seller with any other offers or written communication.*

4. “To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters the licensee has not agreed to investigate.”

*Note the definition of material facts in the Law of Agency.*

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

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

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

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

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

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

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

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

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

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## Confidential Information

The Law of Agency defines confidential information as:

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

How do you as an agent know what the principal “reasonably expects” to be kept confidential.

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

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

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

What are examples of confidential information for the seller?

*Information that could be considered confidential could include the motivation for selling or their financial situation.*

What are examples of confidential information for the buyer?

*Information about the negotiation strategy or their financial resources beyond their ability to qualify could be considered confidential.*

If there are questions about confidentiality, contact your designated broker.

## Material Facts

Perhaps the most controversial is the duty of a licensee generally is to disclose all existing material facts known by licensee. Under the Law of Agency there are three categories of material fact.

A material fact is information which:

1. Substantially and adversely affects the value of the property.
2. Substantially adversely affects a party's ability to perform its obligations in a real estate transaction.
3. Operates to materially impair or defeat the purpose of the transaction.

If the information would affect the buyer's decision to buy, or how much they would pay, then it must be disclosed to the buyer. The same goes for the seller. Disclosure of information that would affect a seller's decision, must be disclosed.

However, the Law of Agency states that certain acts, occurrences or prior uses of the property which do not adversely affect the physical condition or title to the property are not material facts for this law. This means that negative stigmas associated with a particular piece of property may not be considered material facts that the *agent* is required to disclose.

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

This is the Law of Agency. This definition is NOT in the Seller's Disclosure Law. If you are in the position whereby the seller does not want to disclose a negative stigma that is attached to the property from a ghost to a death to a rash of burglaries then your next step is to evaluate the company position with the Designated Broker and/or the company attorney. There is no case law testing this statute in Washington State that I am aware of.

Real estate buyers have taken sellers and brokers to court across the country for misrepresentation issues that focus on problems that are not directly related to the structure of the property. For example, buyers have sued for damages due to a ghost, barking dog, sex offender in area, and crack house in neighborhood.

If a seller wants to keep something secret from the buyer and the buyer subsequently finds out the secret, then a lawsuit could follow. The decision to keep a negative stigma secret should not be made by an agent or encouraged by an agent.

Your license or laws cannot shield you from litigation. People can still sue you and the other party.

## Section 4

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

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

### Duties of a Seller's Agent

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

### Duties of a Buyer's Agent

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

## Agency questions

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

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

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

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

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

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

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

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

## Duties of a Dual Agent

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

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

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

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

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

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

*Dual agency could occur if the licensee discloses to the buyer verbally that they represent the buyer. The seller, most likely in most listing agreements, has agreed in writing to dual agency. If the agent acts as a buyer's agent and is only going to represent the seller, the agent could have created an undisclosed dual agency situation. Undisclosed dual agency is unlawful.*

# Compensation

The agreement to pay commission does not in and of itself create an agency relationship according to the Law of Agency.

In Washington State, in order for a broker to enforce an agreement for a commission on the sale of property, the agreement must be in writing according to RCW 19.36.010 the Statute of Frauds.

## **According to the Law of Agency regarding compensation:**

1. "In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between the brokers."

*Note, that the commission is always paid to a broker according to license law. Commission cannot be paid to an unlicensed person.*

2. "An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee."

*In the past the agents in a real estate transaction typically represented the seller or were subagents of the seller. Today, the agent working with the buyer typically represents the buyer. But, the seller most often pays the commission to the buyer's agent.*

3. "A seller may agree that a seller's agent may share with another broker, the compensation paid by the seller."

*The seller's or listing agent typically shares the commission with the broker that sells the property. This is disclosed on the listing agreement. The percentage of commission that is shared with the buyer's agent is disclosed in the MLS. That percentage of commission is not set or typical, or usual, or standard because otherwise it could violate the provisions of anti trust law.*

*The seller's agent may also share the commission with another broker as a referral fee. Commissions can only be shared with licensed brokers.*

4. "A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer."

*These kinds of situations can occur, for example, if the buyer's agent pays a referral fee to another broker.*

5. "A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction."

*If the agent is getting paid by a buyer, seller and another party for services in a transaction, that must be disclosed in writing to all parties before signing an offer.*

6. "A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer."

*This is an issue because if a buyer's agent is trying to get the property for the best price for the buyer, the amount of commission could be smaller than if the property sold for full price, for example.*

7. "Nothing contained in this chapter obligates a buyer or seller to pay compensation to a licensee, unless the buyer or seller has entered into a written agreement with the licensee specifying the terms of such compensation."

*An agreement authorizing or employing a broker to sell or purchase real estate for compensation is unenforceable, unless the agreement is in writing and signed by the party to be charged according to the statute of Frauds RCW 19.36.010.*

*If an agent shows a property that is NOT listed to a prospective buyer, the seller may not pay commission if the buyer goes to purchase the property without the agent. If the buyer and the seller did not sign any agreements to pay commission, then the agent cannot sue for commission.*

## Limiting Brokers Liability

### Fiduciary vs Statutory Duties

The changes to the Law of Agency in 2013 also state that brokers will only have statutory duties and not fiduciary duties in dealing with their clients. This eliminates any confusion. In 1996, the common law fiduciary duties owed by an agent were changed by the passage of the new chapter on real estate brokerage agency relationships. A number of duties concerning the relationship of an agent to the principal; buyer or seller, landlord or tenant, are set forth in statute. These statutory duties specifically superseded the common law rules applied to real estate licensees to the extent that they are inconsistent. Statutory duties allow brokers, consumers, and the courts to clearly understand an agent's role and responsibilities by listing them in the context of the Agency Law. Fiduciary duties of loyalty, confidence and trust are often hard to define so the laws more specifically identify the role and duties and agent has regarding their clients.

### Elimination of Vicarious Liability

"Vicarious Liability" generally means the imposition of liability on one person for the actionable conduct of another, based solely on the relationship between the two persons.

Under the Law of Agency, a principal may not be help vicariously liable for the acts, errors or omissions of an agency to subagent, unless the agent or subagent is insolvent. In addition, the Law of Agency eliminates the vicarious liability of a licensee based on the acts, errors omissions of a subagent, other than the liability of the broker for the conduct for its affiliated licensee.

1. "A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:
  - a. Unless the principal participated in or authorized the act, error, or omission; or
  - b Except to the extent that:
    - i. The principal benefited from the act, error, or omission; and
    - ii. The Court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.
2. A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error, or omission. This subsection does not limit the liability of a real estate broker of an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker.

## **Elimination of Imputed Knowledge**

The Law of Agency also eliminates the principle that knowledge of and notice to an agent or subagent is imputed to a principal.

1. “ Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts know by an agent or subagent of the principal that are not actually known by the principal.”
2. “Unless otherwise agreed to in writing a licensee does not have knowledge or notice of any facts known by a subagent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker.

In light of the elimination of imputed knowledge and notice, the parties may wish to provide for imputed notice with respect to offers and acceptances, and other contractual notices given under a purchase and sale agreement or lease.

## **Interpretation**

“This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common laws continue to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly.”

## **Enforcement**

The Washington State Department of Licensing retains jurisdiction only over violations of the general duties of licensees under the Law of Agency in Section 3.

Private remedies for violations of the Law of Agency continue to exist, such as damages and forfeiture of a commission.

## Review

The Law of Agency represents a comprehensive approach to agency and disclosure issues in connection with real estate brokerage. In many respects, the Law of Agency assists the consumer by creating presumptions of agency that are aligned with the normal expectations of those involved in real estate transactions.

It is important to know that there are no lawsuits currently in Washington State that have tested this law courts have interpreted this law.

This Law of Agency has been interpreted many different ways by attorneys, brokers, and the Dept. of Licensing. There are many unanswered questions regarding the interpretation of the law and what certain provisions mean in practice. Natalie Danielson is not an attorney, so if there are any questions regarding agency, ASK!

***Remember***  
***Contact your broker and/or corporate attorney***  
***if there are any questions you may have***  
***regarding this class or***  
***the Law of Agency.***

# Washington State Law of Agency R.C.W 18.86

## RCW 18.86.010

### Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.
- (2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.
- (3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.
- (4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.
- (5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.
- (6) "Confidential information" means information from or concerning a principal of a licensee that:
  - (a) Was acquired by the licensee during the course of an agency relationship with the principal;
  - (b) The principal reasonably expects to be kept confidential;
  - (c) The principal has not disclosed or authorized to be disclosed to third parties;
  - (d) Would, if disclosed, operate to the detriment of the principal; and
  - (e) The principal personally would not be obligated to disclose to the other party.
- (7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.
- (8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in chapter [18.85](#) RCW.
- (9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter [18.85](#) RCW.

(12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(15) "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents.

[1996 c 179 § 1.]

#### **RCW 18.86.020**

##### **Agency relationship.**

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

(a) Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller's agent;

(b) Licensee has entered into a subagency agreement with the seller's agent, in which case the licensee is a seller's agent;

(c) Broker's firm has appointed broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the **broker's firm has appointed the broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer**, in which case the broker is a dual agent . . ."

(d) Licensee is the seller or one of the sellers; or

(e) Parties agree otherwise in writing after the licensee has complied with RCW [18.86.030](#)(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW [18.86.060](#). In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction.

[1997 c 217 § 1; 1996 c 179 § 2.]

**NOTES:**

**Effective date -- 1997 c 217 §§ 1-6 and 8:** "Sections 1 through 6 and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 25, 1997]." [1997 c 217 § 9.]

**Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** See note following RCW [18.86.120](#).

**RCW 18.86.030**

**Duties of licensee.**

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

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

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

(d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW [18.86.120](#) to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW [18.86.020](#)(1)(e), [18.86.040](#)(1)(e), [18.86.050](#)(1)(e), or [18.86.060](#)(2) (e) or (f), whichever occurs earliest; and

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

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

[1996 c 179 § 3.]

**RCW 18.86.031****Violation of licensing law.**

A violation of RCW [18.86.030](#) is a violation of RCW [18.85.230](#).

[1996 c 179 § 14.]

**RCW 18.86.040****Seller's agent--Duties.**

(1) Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW [18.86.030](#) and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
- (b) To timely disclose to the seller any conflicts of interest;
- (c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.

(b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest.

[1997 c 217 § 2; 1996 c 179 § 4.]

**NOTES:**

**Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** See note following RCW [18.86.120](#).

**Effective date -- 1997 c 217 §§ 1-6 and 8:** See note following RCW [18.86.020](#).

**RCW 18.86.050****Buyer's agent -- Duties.**

(1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW [18.86.030](#) and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;
- (c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)(a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyers or create a conflict of interest.

[1997 c 217 § 3; 1996 c 179 § 5.]

**NOTES:**

**Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** See note following RCW [18.86.120](#).

**Effective date -- 1997 c 217 §§ 1-6 and 8:** See note following RCW [18.86.020](#).

**RCW 18.86.060**

**Dual agent -- Duties.**

(1) Notwithstanding any other provision of this chapter, a licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW [18.86.030](#)(1)(f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW [18.86.030](#) and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

(a) To take no action that is adverse or detrimental to either party's interest in a transaction;

(b) To timely disclose to both parties any conflicts of interest;

(c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;

(d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;

(e) Unless otherwise agreed to in writing after the dual agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

(3)(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.

(b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.

(4)(a) The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest.

[1997 c 217 § 4; 1996 c 179 § 6.]

**NOTES:**

**Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** See note following RCW [18.86.120](#).

**Effective date -- 1997 c 217 §§ 1-6 and 8:** See note following RCW [18.86.020](#).

**RCW 18.86.070**

**Duration of agency relationship.**

(1) The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

(a) Completion of performance by the licensee;

(b) Expiration of the term agreed upon by the parties;

(c) Termination of the relationship by mutual agreement of the parties; or

(d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:

(a) Accounting for all moneys and property received during the relationship; and

(b) Not disclosing confidential information.

[1997 c 217 § 5; 1996 c 179 § 7.]

**NOTES:**

**Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** See note following RCW [18.86.120](#).

**Effective date -- 1997 c 217 §§ 1-6 and 8:** See note following RCW [18.86.020](#).

**RCW 18.86.080**

**Compensation.**

(1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.

(3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.

(5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a licensee to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer.

[1997 c 217 § 6; 1996 c 179 § 8.]

**NOTES:**

**Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** See note following RCW [18.86.120](#).

**Effective date -- 1997 c 217 §§ 1-6 and 8:** See note following RCW [18.86.020](#).

**RCW 18.86.090**

**Vicarious liability.**

(1) A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:

(a) Unless the principal participated in or authorized the act, error, or omission; or

(b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.

(2) A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker. [1996 c 179 § 9.]

**RCW 18.86.100**

**Imputed knowledge and notice.**

(1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a subagent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker. [1996 c 179 § 10.]

**RCW 18.86.110****Application.**

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly. [1996 c 179 § 11.]

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*Note ... the entire context of the law is in the Law of Agency Pamphlet that you give to all parties, except the section about the pamphlet.*

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**RCW 18.86.120****Pamphlet on the law of real estate agency -- Content.**

The pamphlet required under RCW [18.86.030](#)(1)(f) shall consist of the entire text of RCW [18.86.010](#) through [18.86.030](#) and [18.86.040](#) through [18.86.110](#) with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12-point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

## The Law of Agency

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read before signing any documents.

The following is only a brief summary of the attached law:

Sec. 1. Definitions. Defines the specific terms used in the law.

Sec. 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant -- unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client -- unless the parties agree in writing that both licensees are dual agents.

Sec. 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.

Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.

Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law. [1997 c 217 § 7; 1996 c 179 § 13.]

**NOTES: Real estate agency pamphlet -- 1997 c 217 §§ 1-6:** "Amendments set forth in sections 1 through 6 of this act are not required to be included in the pamphlet on the law of real estate agency required under RCW [18.86.030](#)(1)(f) and [18.86.120](#) until January 1, 1998." [1997 c 217 § 8.] **Effective date -- 1997 c 217 § 7:** "Section 7 of this act takes effect January 1, 1998." [1997 c 217 § 10.]

### **RCW 18.86.900**

**Effective date -- 1996 c 179.**

This chapter shall take effect on January 1, 1997. This chapter does not apply to an agency relationship entered into before January 1, 1997, unless the principal and agent agree in writing that this chapter will, as of January 1, 1997, apply to such agency relationship. [1996 c 179 § 12.]

### **RCW 18.86.901**

**Captions not law -- 1996 c 179.**

Captions used in this chapter do not constitute any part of the law. [1996 c 179 § 15.]

### **RCW 18.86.902**

**Effective date -- 1996 c 179.** This act shall take effect January 1, 1997. [1996 c 179 § 19.]

# When are you an Agent?

## Quiz

### Section 1 What is an Agent?

1. T/F \_\_\_ *The Law of Agency is a federal statute.*
2. T/F \_\_\_ *The Law of Agency applies only to residential licensees.*
3. T/F \_\_\_ *The Law of Agency is an old Washington State law that has been modified.*
4. T/F \_\_\_ *The Law of Agency creates presumptions of agency relationships.*
5. T/F \_\_\_ *“Dual Agency” means a licensee has entered into an agency relationship with two buyers.*
6. T/F \_\_\_ *An “agent” is a licensee who has entered into an agency relationship with a buyer or seller.*
7. T/F \_\_\_ *A “buyer” in the Law of Agency definitions is also an actual or prospective tenant.*
8. T/F \_\_\_ *A “principal” is the broker of the real estate agent.*
9. T/F \_\_\_ *A real estate transaction exists when a written offer has been signed by a party.*
10. T/F \_\_\_ *A licensee can create an agency relationship unintentionally.*

### Section 2 Who do you represent and when?

11. T/F \_\_\_ *The most common agency contracts we use include listing agreements and buyer agency agreements.*
12. T/F \_\_\_ *An agent could disclose in writing that there is an agency relationship with a seller but conduct could create an undisclosed dual agency with the buyer.*
13. T/F \_\_\_ *All agency relationships must be in writing.*
14. T/F \_\_\_ *The agency relationship terminates when a property the agent listed is sold and closed.*
15. T/F \_\_\_ *The agent is not obligated to keep information confidential after the termination of the agency relationship.*
16. T/F \_\_\_ *A licensee can work with Buyer as a non-agent as long as the buyer agrees in writing.*
17. T/F \_\_\_ *A licensee can be presumed to be a buyer’s agent when they show properties to the buyer.*
18. T/F \_\_\_ *If the broker is a listing agent, then the relationship with the buyer showing that listing is not as a buyers agent.*
19. T/F \_\_\_ *Dual agency must be agreed to in writing by all parties.*
20. T/F \_\_\_ *A buyer’s agent selling a property that is listed by their real estate company represents only the buyer.*
21. T/F \_\_\_ *A broker becomes a dual agent when the selling and listing agent are within the same company.*
22. T/F \_\_\_ *The selling agent does not have to get written consent from a buyer when selling an in-house listing.*
23. T/F \_\_\_ *If the seller passes away the agency relationship and the listing continue until expiration.*
24. T/F \_\_\_ *The licensee can be a buyer’s agent representing only the buyer in the sale of a home and at the same time represent only the seller in the purchase of another home.*
25. T/F \_\_\_ *Termination of an agency relationship must be in writing.*

### Section 3 Duties of a Broker

26. T/F\_\_\_A buyer can waive the real estate agents duty of honesty and good faith.
27. T/F\_\_\_If you have a listing that has a pending sale, you do not have to present any other offers.
28. T/F\_\_\_The agent only has to provide a Law of Agency pamphlet to the principal prior to accepting earnest money.
29. T/F\_\_\_A pamphlet on the Law of Agency must be provided to tenants prior to signing leases.
30. T/F\_\_\_The real estate agent must keep confidential the source of income for the buyer if the buyer expects it to be confidential and it doesn't affect their ability to qualify.
31. T/F\_\_\_Information maybe confidential even though it is a matter of public record.
32. T/F\_\_\_A seller's bottom line for negotiation purposes may be confidential.
33. T/F\_\_\_A material fact is information that adversely affects the value of a property.
34. T/F\_\_\_Real estate buyers have sued sellers and real estate agents for not disclosing barking dogs, sex offenders in the area, and ghosts.
35. T/F\_\_\_A negative stigma that a seller wants to hide should be discussed with corporate attorney and broker.

### Section 4 Duties of a Seller's and Buyer's Agent

36. T/F\_\_\_A buyer's agent must be loyal to the buyer from the day they meet.
37. T/F\_\_\_A transaction commences at the time a party signs an agreement.
38. T/F\_\_\_A seller's agent may show alternative properties not owned by the seller to prospective buyers.
39. T/F\_\_\_A leasing agent representing a tenant may show properties the tenant is interested in to other prospective tenants without breaching their duty to the first tenant.
40. T/F\_\_\_An agent can only work as a dual agent only after agreeing in writing.
41. T/F\_\_\_A dual agent must disclose terms of compensation prior to representing both parties.
42. T/F\_\_\_An agent breaches his duty to the seller by listing the neighbors identical house for less.
43. T/F\_\_\_Section 3 (1) (f) that is referred to in the Law of Agency is the pamphlet on the Law.
44. T/F\_\_\_An agent must release confidential information if they receive a court order to do so.
45. T/F\_\_\_The agent is to advise the buyer to get expert advice on matters that are beyond the agent's expertise.

### Section 5 Compensation and Broker Liability

46. T/F\_\_\_The broker's compensation can only be paid by the seller at closing.
47. T/F\_\_\_The party being represented by the agent is always the party paying commission.
48. T/F\_\_\_If the buyer is paying the commission, it can be paid directly to the agent instead of the broker.
49. T/F\_\_\_A buyer's agent can pay a referral fee to another real estate agent through his broker.
50. T/F\_\_\_Compensation to the agent and broker can be kept confidential.
51. T/F\_\_\_An agreement authorizing a broker to sell real estate for compensation is unenforceable if it is not in writing and signed.
52. T/F\_\_\_The Law of Agency obligates a real estate agent to show a buyer properties that are for sale by owner.
53. T/F\_\_\_Under "vicarious liability" in the Law of Agency, the principal may not be liable for the errors of the agent.
54. T/F\_\_\_The Washington state Department of Licensing retains jurisdiction only over violations of the general duties of a licensee in Section 3 of the Law of Agency.
55. T/F\_\_\_It is imperative that the real estate licensee contact the broker or corporate attorney if he or she has any questions about the Law of Agency.



Use Answer Sheet ... thanks... or sign and date the quiz.  
**Answer Sheet... When are you an Agent?**

1		21		41	
2		22		42	
3		23		43	
4		24		44	
5		25		45	
6		26		46	
7		27		47	
8		28		48	
9		29		49	
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I attest that I have read the materials and have answered the questions.

**Date Course Started** \_\_\_\_\_ **Date Course Completed** \_\_\_\_\_  
**Print Name** \_\_\_\_\_ **Company** \_\_\_\_\_ **Signature** \_\_\_\_\_

**PROFESSIONAL Direction**  
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## Mandatory Evaluation

**Did you read the material in the booklet on this date?**

**YES / NO**

Did you complete the quiz and attach the Answer Sheet or the quiz adding your dates and signature?

**YES / NO**

Did you pay Tuition? Payment on the front of website. Paypal processes credit cards..

**YES / NO**

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

A "clock hour" is 50 minutes. A 5 hour class should take about 4 hrs 10 min.

How long did it take you to complete the course? \_\_\_\_\_

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

What are 3 things that you learned from the course?

- 1.
- 2.
- 3.

Would you take another correspondence course from Professional Direction? Yes/ No

Name of Class	<b>When are you an Agent?</b>
Print Name	Signature
Company	Address
City / Zip Code	Phone
Email	
License Renewal Date	Date(s) Class taken

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