

Keep Your License

Retain Your Reputation



By Natalie Danielson

This 7.5 clock hour course takes a stimulating look at the ethical and legal conduct and issues we face in the real estate industry. Learn ways you could lose your license, discriminating practices, and what risks you might be taking today. Ignorance will not be your best defense in an arbitration hearing or a court of law!

PROFESSIONAL *Direction* INC

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



Please Read this First! Thanks!

PROFESSIONAL *Direction* INC

Clockhours by Mail

You will be provided with a booklet of with the class material in a pdf format and it is only for use as a clockhour course under Professional Direction. The course has been divided up into sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.

Answer the questions on the quiz answer sheet.

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

Email Answer Sheet and Evaluation with Tuition and pay tuition online at the website.

The certificate will be mailed within 1 day of receipt of course materials and handout. Email if desperate.

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

Thanks!

Natalie Danielson

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Keep Your License

Avoid Arbitration...Retain Reputation

Curriculum

Session Hours	Course Objectives
1 1 hour	<p style="text-align: center;">Ethics business and personal</p> <p style="text-align: center;">Define "Ethics"</p> <p style="text-align: center;">Difference between ethics and laws</p> <p style="text-align: center;">Know the Golden Rule</p> <p style="text-align: center;">Public Perception of Ethical Behavior</p> <p style="text-align: center;">What are values and how do they differ</p> <p style="text-align: center;">Know the traditional 5 ethics questions</p> <p style="text-align: center;">Know what the Code of Ethics is</p>
2 2 hours	<p style="text-align: center;">Rules and Regulations</p> <p style="text-align: center;">How do the NWMLS rules affect the industry</p> <p style="text-align: center;">How do they differ than laws</p> <p style="text-align: center;">How are they enforced</p>
3 4 hours	<p style="text-align: center;">It's the law</p> <p style="text-align: center;">Learn about administration of license law</p> <p style="text-align: center;">Know where to get a copy of license laws</p> <p style="text-align: center;">Learn about the real estate commission</p> <p style="text-align: center;">Learn how to lose your license</p> <p style="text-align: center;">Law of Agency</p> <p style="text-align: center;">Understand the duties under the agency law</p> <p style="text-align: center;">Fair Housing</p> <p style="text-align: center;">Understand the federal, state and local laws</p> <p style="text-align: center;">Know how it affects advertising and client relations</p> <p style="text-align: center;">Anti Trust</p> <p style="text-align: center;">Know how the federal laws affect you</p> <p style="text-align: center;">Misrepresentation</p> <p style="text-align: center;">Understand that misrepresentation is largest cause of lawsuits</p>
5 ½ hour	<p style="text-align: center;">Professionalism</p> <p style="text-align: center;">Learn the importance of professionalism.</p> <p style="text-align: center;">Learn where to get resources</p>

Ethics: Business and Personal

Defining and Understanding Ethics

Webster's Dictionary defines "ethics" as the moral principles which determine the rightness or wrongness of particular acts or activities.

Real estate ethics is: a set of behavioral standards above the minimum required by law (or rules) to which the industry as a whole can look to for support and guidance in conducting its daily affairs.

The determination of what is or is not ethical behavior is judgmental in nature. You will not find universal agreement as to what is "ethically right." Ethics can be compared to a set of "moral codes" for society.

So then, what are the differences between ethics and legal guidelines? Ethics is a concept that deals with right and moral values. Ethical behavior often precedes legal guidelines. The law is a set of minimum standards that society will tolerate.

Underlying all ethical teachings is The Golden Rule. It is that which states: "Do unto others as you would have others do unto you." It is the most basic test for ethical conduct.

Ethical behavior in the business world is the kind of behavior accepted by society.

Perceptions of what is ethical lead to the difficulty of ranking different values against one another.

Consider how money and families can be used to justify behavior that may also be perceived as unethical. Sometimes "the end is used to justify the means."

The "everybody is doing it" excuse is not justification for behavior that may be perceived as unethical.

What does the word "ethics" mean to you?

Ethics and the Real Estate Industry

The real estate industry has always wrestled with the perception of what is considered ethical behavior. The general public has generally has the impression that those in real estate can never really be trusted which leads to the belief that the agents often are unethical.

But even inside the industry the structure does not necessarily encourage the highest degree of ethical behavior. For example, we have been rewarding real estate licensees in the industry with incentives that have tended to overemphasize financial success. Sometimes they are given professional recognition for serving themselves best, while we disregard their attitudes toward professionalism and public service. Certainly we expect to be adequately rewarded for success, and money is important in our society, but the first concern of professionals is to meet the needs of our clients and the public in a proper and ethical manner.

How do you think the public ranks real estate agents as practitioners of ethical behavior?

Do you think the public considers real estate agents to follow ethical practices to a higher or lower degree than they did 10...15...20 years ago? How has the public's perception changed? Why?

What positive personal actions could agents take that could create a higher ethical perception from their own clients and customers? List three examples.

Everyone agrees that one shouldn't steal another's property. No one would dream of taking home a computer from the office, but is it acceptable to use office stationery for personal letters and use company stamps for them?

Is it all right to slow down the offer from another agent on your listing because you are just about to get an even better offer both in price and condition? How would you handle this?

What are Values?

Values reflect what individuals consider important in the large scheme of things. The individual's concept of relative worth or importance of certain ideas shapes one's ethics.

Because of increasing pluralism or diversity of society our values have become less defined and have changed. Ethnic diversity results in ethical diversity.

What affects our values and how?

- Religion- how we ought to behave
- Philosophy- principles of morals
- Culture- societal values to norms of everyday living
- Legal system- ethics over and above the law
- Professional values- organizations and societies
- Family- traditions and diverse backgrounds

Real estate agents and their clients all come from a diverse background. The country or state from which they were raised, the religious influence, the personal, health, and financial challenges in their family all affect their value system.

Often in this industry, agents make the mistake of assuming what kind of values that may be driving their clients or even the other agents involved in the transaction.

How does that example relate to the sale of some raw land that may have challenges to developing?



Let's say I sell you my cheap watch passing it off as an expensive watch. You buy it thinking you got a great deal. The values of the observer will affect how ethical the transaction is perceived. One observer might think, "Wow, the seller got a great deal of cash for that cheap watch. Good job!"

Another observer might think, "The seller was a cheat passing off a cheap watch for an expensive one and taking advantage of a buyer."

Ethics on an Individual Level

There are questions that we can ask ourselves to help determine the ethicalness of actions. Imagine if people asked themselves these questions when making a decision that is controversial?

Traditional 5 questions:

1. If everyone did what I'm doing, would it be a better world?
2. What would be the best self dictate that I do here?
3. The test of publicity...Do I want everyone to know what I'm doing?
4. What would the person I admire most think of what I'm doing?
5. Where is it likely to lead? If I persist in this? What is the probable outcome?

The text, Business and Society; Managing Corporate Social Performance by Archie B. Carroll looks at these types of questions in another way.

Test of Common Sense. Does the action I'm about to take make sense? Might I be caught?

Will the Action Hurt Someone? What kind of negative impact will my actions have on others?

Test of One's Self. Is the act compatible with your concept of yourself at your best?

Test of Making Something Public. Can your actions withstand public scrutiny?

Test of Ventilation. Can the idea hold up under exposure to others' views and criticisms?

Beware of the Purified Idea. Sometimes we purify superior's judgment higher than our own based on their rank. For example, you can always find a lawyer who will endorse almost any idea or plan if it is worded in just the right way.

The Gag Test. Do you simply "gag" at the prospect of carrying it out?

Have you found yourself asking yourself these types of questions?

Have you wondered whether others ask them of themselves?

Aren't these just interesting questions to remember?

Code of Ethics

Industry organizations in order to achieve and protect a sense of professionalism have created Codes of Ethics to create a standard of conduct for the membership.

The National Association of REALTORS adopted the "Code of Ethics and Standards of Practice in 1913. The first Article of the Code in 1913 read: "The real estate agents should be absolutely honest, truthful, faithful, and efficient. He should bear in mind that he is an employee...that his client is his employer and is entitled to the best service the real estate man can give...his information, talent, time, services, loyalty, confidence and fidelity."

In 1924 the code became obligatory. Since that time it has been amended several times each decade to keep up with a changing society. The Code is a "living document." It perseveres because of:

1. significance,
2. relevance,
3. usefulness.

The Articles of the Code are Criteria of Excellence/Realistic Standards of Performance.

1. Guide to measure professional conduct
2. Represents furthestmost reach of professional aspirations
3. Constant, but not absolute
4. Enforceable not oppressive
5. Meaningful not dogmatic

The Code was a forerunner of license laws. In today's world, sensitivity on the part of REALTORS is required to the full implications of their legal obligations:

- Implied warranty
- Agency
- Fiduciary duties
- Equal opportunities

Enforcement by local boards could suspend or expel REALTOR from the board. The majority of MLS in the United States are REALTOR owned. The disciplined REALTOR is now out of business.

So, enters the Sherman Act.

Trade Association Code of Ethics must be shown to:

1. Promote, rather than reduce competition, and
2. it's enforcement procedures are fair and non-discriminatory.

Trade associations must supervise those to whom it delegates authority to interpret and enforce its code of ethics. Associations are subject to 3 times damages if a member misapplies the code in a way to injure another member. Both the member and the association as a whole will be disciplined.

(This is just the copy of the Articles of the Code. The Standards of Practice clarify the ethical obligations under the code.
The entire publication updated is available at realtor.com)

Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, “Whatsoever ye would that others should do to you, do ye even so to them.”

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/01)*

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

Article 3
REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

Article 4
REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

Article 5
REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6
REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent. When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*

Article 7
In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. *(Amended 1/93)*

Article 8
REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9
REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

Duties to the Public

Article 10
REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin, or sexual orientation. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Amended 1/11)*
REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Amended 1/11)*

Article 11
The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

Article 12
REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

Article 13
REALTORS® shall not engage in activities that constitute the unauthorized practice of law and recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. *(Amended 1/92)*

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. *(Amended 1/04)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award. *(Amended 1/01)*

The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, 1974, 1982, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 2009 and 2010.

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

Many, but not all real estate firms, belong to the Association of REALTORS.

The “ethics” class is required by the Association of REALTORS. It is not required to renew your real estate license in Washington State. The “ethics” class is not the “Core Class” that IS required.

How does the Code of Ethics and Standards of Practice influence the real estate industry?

Is your office a member of the Association of REALTORS?

Rules and Regulations

Multiple Listing Association Rules

The Northwest Multiple Listing Association NWMLS is one of the largest Multiple Listing Organizations in the country. It is independently owned and not a part of the Association of REALTORS. It is owned by the Brokers like a co-op. The NWMLS is a large database with properties for sale in much of Washington State. The NWMLS has a list of rules and regulations to be followed by the membership.

There are several other multiple listing associations in different areas throughout Washington State. Some are owned and managed by the REALTOR association.

There are over 200 NWMLS Rules. They can be divided up into 10 basic areas.

- | | |
|-----------------------|--|
| 1. Listing Procedures | 2. Tracts, Plats, and New Construction |
| 3. Key and Key Boxes | 4. Forms |
| 5. Fees | 6. Commission |
| 7. Offers and Sales | 8. Signs, Advertising, and Open Houses |
| 9. Leases and Rentals | 10. Members Responsibilities |

Why do you think such rules were created? For example:

- 11e Signed statement from seller required on specific restrictions on showing and sale*
- 50a No loan of key card*
- 85 Password and Non Disclosure Agreement*
- 101 Division of Commission*
- 123 Contingencies*
- 183 Transmitting NWMLS information to non members*

Commercial Brokers Association

Otherwise known as CBA, this is a commercial multiple listing association. It also has a set of rules and regulations for its membership.

Enforcement of Rules

In 1989 NWMLS adopted the following Bylaw:

"All violations of the Bylaws or Rules of PSMLA shall subject the member to disciplinary action, in accordance with rules adopted and, from time to time, amended by the Board of Directors."

NWMLS has 2 committees to police itself. They include:

Arbitration which deals with disputes over commission.

Disciplinary which hears complaints about violation of any rule or by-law. The NWMLS cannot revoke the license of an agent... but it can levy fines and report violations of law to the Department of Licensing.

It's the Law!

Real Estate License Law

Every state licenses real estate agents and regulates their activities. Real estate license laws are based on the police power- the government power to regulate for the protection of the public welfare- and their purpose is to protect real estate buyers and sellers.

Administration of the License Law

The Washington State Department of Licensing is responsible for administration of license law, including real estate license law as well as the other laws regulating licenses. The Director of the Department of Licensing is in charge of all the divisions. The director and all real estate division staff are employees of the state of Washington and cannot have any interest in a real estate firm.

The Director is appointed by the Governor. The Director is charged with enforcing all laws, rules, and regulations relating to the licensing of real estate brokers and salespersons. The Director has the authority to grant or deny licenses, and to hold disciplinary hearing and impose penalties for violations of the license law. And, with the advice and approval of the Real Estate Commission, the Director also issues rules and regulations to govern the activities and practices of real estate licensees.

The Term "real estate license law" is commonly used to refer not only to the statutory provisions adopted by the state legislature, but to the regulations issued by the Director as well. The license law statute is Chapter 18.85 of the Revised Code of Washington. In order to change or add a law the proposal goes thru the house and senate committees, then is taken for a vote at the House and the Senate, and then is sent to the Governor for final signature.

The Director's regulations are Chapter 308-124 of the Washington Administrative Code. They are the rules that go along with the laws. In order to change or add rules the process includes a public hearing and then the director can sign the new regulation.

For example, it is a "law" to take 30 clock hours of continuing education as a licensee. The "rules or regulations" call for the approval of the classes and the schools.

All real estate licensees are supposed to obtain a copy of the real estate license law to keep informed of changes in the regulations. The laws can be found on the Department of Licensing website at www.dol.wa.gov.

July 2010, some significant changes to real estate license laws took effect. Briefly, all real estate licensees in Washington State will be called "brokers." Current associate brokers will be called "managing brokers." Offices will still have "designated brokers." Now the firms will also have a license. Every agent will be

fingerprinted over the first 6 years of the law taking effect. You will be randomly selected in one of the next 3 renewal periods and will get a fingerprint card with your renewal. All new agents will have to take practices and fundamentals, have a high school degree or equivalent, and be fingerprinted prior to getting a license.

The Real Estate Commission

The Real Estate Commission is made up of the Director and six commissioners that are appointed by the Governor. The commissioners are generally required to have at least 5 years of real estate experience. Often they are real estate brokers.

The commissioners serve 6 year terms. They are paid a per diem stipend, plus travel expenses for the days they spend holding public hearings, meeting with the Director, and conducting other Commission business.

The real estate commission meets quarterly at various locations throughout the state. The meetings are open to the public. Attend one! Virtually no real estate agent in the state has been at a commission meeting in years! Natalie Danielson has attended more meetings (almost every meeting for the past 14 years!) than most of the staff and all the commissioners! The agenda and minutes are available on the DOL website.

At the commission meetings upcoming laws and rules are discussed. Committee assignments are made at the meetings. Annual reports and budgets for the department. Issues regarding clock hour classes, distance learning classes, required amount of hours, curriculum for the Core Class and more are discussed.

Ways to Lose Your License

The Director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions:

- Suspend or revoke license,
- levy a fine not to exceed one thousand dollars for each offense,
- require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated,
- or deny the license of any holder or applicant who is guilty of the a violation

The Uniform Regulation of Business and Professions Act

It is the intent of the legislature to consolidate disciplinary procedures for the licensed businesses and professions under the business and professions division of the department of licensing by providing a uniform disciplinary act for businesses and professions with standardized procedures for the regulation of businesses and professions and the enforcement of laws, the purpose of which is to assure the public of the adequacy of business and professional competence and conduct.

RCW 18.235.130 Uniform Regulation of Business and Professions Act

Unprofessional conduct -- Acts or conditions that constitute.

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(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. 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 section, 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 section 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 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 a consumer or that creates an unreasonable risk that a consumer may be harmed or damaged;

(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 the recipient of the subpoena 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 lawful rule made by the disciplinary authority;

(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 section 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; and

(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.

Disciplinary Actions by the Real Estate Dept of Licensing 2018-2019

These are published on the Department of Licensing website www.dol.wa.gov.

February 2019

Broker in 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 in 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 in 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 in 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.
 - Must complete the education courses by October 1, 2019.

Broker in Wenatchee/Republic

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

Broker in Tacoma

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

November 2018

Broker in 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 in 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.

Julian Travis - Marysville

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

Broker in 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 in 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 in 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 in 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 in 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 in 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.

July 2018

Designated Broker in Kennewick

- Finding: Unprofessional Conduct - Mishandling of property management funds while licensed in California, and failing to supervise employees.
- Action: Real Estate Designated Broker License shall not hold trust accounts or engage in any property management activities for a period of 10 years.

Designated Broker in Bonney Lake

- Finding: Unprofessional Conduct - Convicted of Theft in the Second Degree and Abuse of Office.
- Action: Real Estate Designated Broker License Revoked for a period of 10 years.

Broker in Redmond

- Finding: Unprofessional Conduct - Conducted property management services outside the firm.
- Action: Real Estate Broker License Suspended for a period of 1 year all stayed (not imposed) for a period of 3 years; and assessed a fine of \$3,500 due within 1 year.

Broker in Kirkland

- Finding: Unprofessional Conduct- Convictions of Theft.

- Action: Real Estate Broker License shall be under heightened supervision by her designated broker or branch manager until February 05, 2022; and not obtain or attempt to obtain a Multiple Listing Service key, or may not enter listed properties for a period of 2 years.

June 2018

Broker in Vancouver

- Finding: Unprofessional Conduct - Created fictitious document and forged a signature.
- Action: Real Estate Broker License Suspended for a period of 1 year, 60 days actual commence on November 1, 2018, with remaining 305 days to be stayed for a period of 3 years; and under heightened supervision for 2 years.

May 2018

Broker in Fox Island

- Finding: Unprofessional Conduct - Convicted of Attempted Residential Burglary.
- Action: Real Estate Broker License Revoked for a period of 10 years.

Broker in Renton

- Finding: Unprofessional Conduct - Convicted of Residential Burglary in the Second Degree.
- Action: Real Estate Broker License Revoked for a period of 3 years.

Designated Broker in Federal Way

- Finding: Unprofessional Conduct - Failure to produce records related to property management and failure to cooperate with the Department.
- Action: Real Estate Designated Broker License Revoked for a period of 10 years.

Designated Broker in Issaquah

- Finding: Unprofessional Conduct - Failure to cooperate with the Department.
- Action: Real Estate Designated Broker License assessed a fine of \$1,000 due within 1 year.

April 2018

Managing Broker in Spanaway

- Finding: Unprofessional Conduct – Occupying a listed home without permission.
- Action: Real Estate Managing Broker License Revoked for a period of 5 years; and assessed a fine of \$5,000 due within 1 year.

Broker in Vancouver

- Finding: Unprofessional Conduct - Misrepresentation to landlord while conducting property management.
- Action: Real Estate Broker License Suspended for a period of 1 year, 60 days actual, with remaining 305 days to be stayed for a period of 3 years; and assessed a fine of \$1,500 due within 1 year.

Broker in Puyallup

- Finding: Unprofessional Conduct - Convicted of False Statements in a Loan Application.
- Action: Real Estate Broker License Revoked for a period of 10 years.

Broker in Pasco

- Finding: Unprofessional Conduct - Failed to disclose convictions on Real Estate Broker Application.
- Action: Real Estate Broker License Suspended for a period of 1 year, all stayed for a period of 3 years.

What effect does printing the offenses on the web have on the other licensees?

Will ignorance save you from disciplinary actions?

Agency Law

Who you represent and what that means in practice is one of the issues that agents often dismiss, but can add to one of the larger liability risks they face.

In the spring of 1996, Governor Lowry signed the Agency Law R.C.W 18.86 establishing the agency relationships between principals and licensees in real estate transactions. It became effective in January 1997. It was amended in April 1997. It will be amended in 2011 because of the new license law changes that took effect in July 2010.

Common law duties that are inconsistent with the provisions of the Law are superseded. All other common law remains in effect.



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. According to the new Act, the presumption of buyer agency commences at the time the agent performs real estate brokerage services.

Express Agreement. Agency can be created by oral or written agreement.

What are the most common agency contracts we deal with as brokers? What acts do they specifically authorize the agent to perform?

Sometimes it is thought that no agency exists unless there is a written agreement, but a written contract is not required to create an agency relationship. Specific oral authorization from the principal must specifically permit an agent to perform acts on behalf of the principal in dealing with others.

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.

Implied agreement. Agency can be a result of words or conduct. Implied agency is usually found by courts where the intentions of the agent and the alleged principal are shown by their conduct and words.

If a broker signed an agreement with a buyer stating they are acting as the agent of the seller, could an implied agency relationship be found existing between the agent and buyer?

How can a broker create an agency relationship unintentionally or accidentally?

What are some of the most common agency challenges we have today as an agent?

Law of Agency Provisions

Duties of a Licensee Generally

According to the new law, a licensee will owe certain duties to the public regardless of whom the licensee represents.

These duties are non-waivable and include:

- Exercising reasonable skill and care,
- Show Honesty and good faith,
- Disclosure of material defects,
- Accounting for money and property
- Providing a pamphlet on agency before any documents are signed.

Presumption of Agency

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 that buyer. “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.

1. “The broker has entered into a written agency agreement with the seller.”
2. “The broker has entered into a subagency agreement with the seller’s agent.”
3. “The broker has entered into a written agreement with both parties.”
4. “The broker is one of the sellers.”
5. “The parties otherwise in writing.”

Seller’s Agent

A seller’s agent also owes a duty to make a good faith and continuous effort to find a buyer, unless otherwise agreed in writing.

A seller’s agent owes the non-waivable duties to:

- Be loyal,
- Disclose conflicts of interest,
- Advise the seller to seek expert advice on matters beyond the agent’s expertise,
- To not disclose confidential information.

A Buyer’s Agent

A buyer’s agent owes the same non-waivable duties to the buyer. Unless otherwise agreed in writing, a buyer’s agent also owes a duty to make a good faith and continuous effort to find the buyer a property.

What is clearly different than the way agents have practiced agency over the past few decades, a licensee according to the new law, who works with the buyer is presumed to be the buyer’s agent. There are exceptions and they include situations where:

- The licensee has a written agency agreement with the seller
- The licensee has a written subagent agreement with the seller’s agent,
- The licensee has a written agency agreement with both parties,
- The licensee is the seller,

- The parties agree otherwise in writing.

A Dual Agent

A licensee can act as a dual agent only with the written consent of both parties which must also have terms of compensation. Therefore, you need to have a written agreement with a buyer to show properties that are listed by you or your office before representing the buyer as a dual agent.

A dual agent owes the following non-waivable duties:

- Take no adverse action detrimental to either party,
- Disclose conflicts of interest
- Advise the parties to seek expert advice on matters beyond the agent's expertise,
- Keep confidential certain information.

A dual agent also owes a duty to make a good faith and continuous effort to either find a buyer for a seller's property or a property for a buyer.

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. An example would be where an agent in the office represents a buyer purchasing a home listed by another agent in the same office. 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.

The section on Dual Agency became an issue because of the confusion and practice of the agents when working in a dual agency situation and when is there full disclosure. The prior version of RCW 18.86.020 Law of Agency states that:

“ A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the: . . . Licensee has entered into a **written agency agreement** with both parties, in which case the licensee is a dual agent . . .” (it must include terms of compensation.)

Note, under this statute, this is the only way a dual agency could have been created in Washington. Unfortunately, exactly what that required wasn't 100% clear. Some people claimed that a dual agency could be created by either selecting a box on the NWMLS Purchase and Sale Agreement indicating the listing agent also represented the buyer, or using a Form 42 Agency Disclosure indicating a dual agency situation. So though licensees used the PSA or Form 42, the statute still stated that there had to a written agreement prior to performing brokerage services. It must also disclose terms of compensation.

Under the amended Law of Agency RCW 18.86.020 it states:

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

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

Term of agency relationship

An agency relationship starts when a licensee provides brokerage services to a principal.

The relationship ends at one of the following:

- The completion of the licensee's performance,
- Expiration of the agreed upon term,
- Mutual agreement, or,
- One party giving notice to the other.

After the agency relationship ends, the licensee owes no further duties except

- a) to account for all money and property received, and
- b) to not disclose confidential information.

Compensation

The payment of compensation does not necessarily establish an agency relationship. A broker may share compensation with cooperating brokers. A broker may receive compensation from more than one party if the parties agree in writing. But, according to License Law, all commissions are to be paid to the firm who, in turn, can pay those licensed under the firm.

Vicarious Liability

Common law vicarious liability is changed. A principal is not liable for an act error or omission by an agent unless the principal participated in or authorized the act, error or omission. However, if the principal benefited and it is likely that the agent is insolvent, the principal is liable. A licensee is not liable for the acts, errors, or omissions of a subagent unless the licensee authorized or participated in the act, error or omission. However, this does not limit the liability of the broker for the acts, errors or omissions of an associate broker or salesperson licensed to her/ him.

Imputed Knowledge

Common law imputed knowledge is also changed. A principal does not have knowledge or notice of any facts known by an agent that are not actually known by the principal. Also, a licensee does not have knowledge or notice of facts known by a subagent that are not actually known by the licensee. However, this does not limit the knowledge imputed to a broker of any facts known by an associate broker or salesperson licensed to her or him.

Fair Housing

Unfair discrimination is prohibited in almost all real estate transactions by federal and state law.

Civil Rights Act of 1866

This law states that "all citizens of the United States shall have the same right in every state and territory as is by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." The act any discrimination based on race or ancestry.



enjoyed
prohibits

Someone who has been discriminated against in violation of the Civil Rights Act of 1866 can sue in federal court. The court could issue an injunction ordering the defendant to stop discriminating. The court could also order the defendant to pay the plaintiff both compensatory damages to compensate for losses and suffering caused by the discrimination and punitive damages, an additional sum to punish the defendant for wrongdoing.

The Federal Fair Housing Act

Contained in Title VIII of the Civil Rights Act of 1968, the Federal Fair Housing Act goes farther than the 1866 act, making it illegal to discriminated on the basis of **race, color, religion, sex, national origin** (in 1988 **familiar status** and **handicap** were added) in the sale or lease of residential property or in the sale or lease of vacant land for the construction of residential buildings. The law also prohibits discrimination in advertising, lending, brokerage, and other services in connection with residential real estate transactions. However, unlike the 1866 act, the Fair Housing Act does not apply to non-residential transactions.

In 1988 the Amendment Act added familial status and handicap:

Handicap as being defined as being a physical or mental impairment, which substantially limits one or more major life activities. "Major life activities" would be considered to be a person's ability to:

Care for oneself	Perform manual tasks
Walk	See
Hear	Speak
Breathe	Learn

A physical and/or mental impairment includes any physiological disorder or condition, cosmetic disfigurement or anatomical loss. Mental and/or psychological disorders are included as are AIDS and drug addition under the protected class of Handicap. Specifically, excluded are additions caused by current illegal use of controlled substances.

Familial Status centers on families where one or more individuals who have not obtained the age of eighteen years of age and otherwise have domicile with a parent, legal guardian or designee of the same. Persons who are pregnant are also covered by the "familial status" provision of the act.

Advertising

When advertising, bear in mind that you cannot use words that are discriminatory in nature. A case was won against the Seattle Times newspaper where an ad said, "two blocks from St. Mark's cathedral." These words can include, but are not limited to:

Adult	Exclusive
Bachelor	Handicap as in not suitable for...
Couple	Integrated
Family	Membership Approval
Mature	Mentally Ill
No Children	Religious
One Person	Religious Landmark
Retired	Older Persons*
Sex	Physically Fit Person
Single	Private
Two people	Race
Christian	Restricted
Executive	Senior Discount*

*Housing for elderly may be exempt from the Fair Housing Act if specific criteria have been met.

THERE IS NO COMPLETE LIST of words that could violate the law! The law says that if a real estate ad for a property for sale or lease includes words that show a *preference, limitation, discrimination* or *disparate treatment* then the ad could be considered discriminatory.

Consider other words that could show a preference, limitation or discrimination...

Homogenous neighborhood, Den for Dad, Mother in Law Apartment, Perfect for Couples.

A protected class is not necessarily a minority. Discrimination cannot occur based on the background, color, or other personal status of the individual.

Discuss what words in ads may be discriminatory?

Enforcement Procedures

There are "testers" from HUD that see that a company or licensee is not discriminating.

Punitive damages can go to \$200,000 if convicted. The investigations can go as long as 100 days! It is very easy for individuals to file a complaint. The government is the "attorney" for individuals who file.

Washington State Law on Discrimination

Washington State Law in R.C.W 49.60 prohibits discrimination in employment, credit, and insurance transactions, in public resort accommodation or amusement and in real property transactions because of race, creed, color, national origin, sex, marital status, age, or the presence or any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person. In addition, sexual orientation was also added as a protected class in Washington State. The law applies to ALL real property transactions including sale, appraisal, brokering, exchange, purchase, rental, or lease of real property or applying for a real estate loan. The word “handicap” was amended to read “disability.” Individuals with HIV or perceived HIV infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability. On December 6, 2012 Washington State law allowing same sex marriage took effect.

The consumer has the right for freedom from discrimination in Washington State includes, (but is not limited to just the following):

- The right to obtain employment.
- The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement.
- The right to engage in real estate transactions without discrimination, including discrimination against families with children. Families with children include a person who has a child (children) under 18 years old living with them. Parents, legal guardians, and those with written permission of parent or guardian are included. It also applies to any person who is pregnant or in the process of adoption or guardianship. Housing for seniors as in the Federal Fair Housing Act is exempt.
- The right to engage in credit transactions.
- The right to engage in insurance transactions with health maintenance organizations.
- The right to engage in commerce free from any discriminatory boycotts or blacklists.

Local Jurisdictions prohibit discrimination

Some local jurisdictions may have additional anti discrimination laws and other protected classes. Other protected classes can include:

sexual orientation,

military discharge,

dishonorable military discharge

matriculation,

source of income

personal appearance.

Section 8 housing subsidy

Political ideology

Parental status

Don't Discriminate!

Do not discriminate in a real estate transaction for any reason regarding the clients. It is important to choose the offer and the transaction and NOT the buyers, sellers, landlords or tenants! Decisions people can make can include choosing the “perfect family” to purchase their home. When, in fact, the “perfect family” may include a sex offender and a child just out of jail for drug trafficking. The letter that buyers present to sellers with offers often include reasons to accept an offer based on their family status, for example. It is important to avoid any chance that a buyer is chosen because of any protected class over another buyer.

Federal Anti Trust

The primary anti trust law that affects real estate brokers is Section 1 of the Sherman Act. It is designed to preserve free competition in the market place. It states that: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade of commerce among the several states, or with foreign nations is declared to be illegal."

Real estate brokers setting a "standard" or fixed commission rate could be in violation of the Act.

It consists of the two principle elements:

1. A *contract, combinations or conspiracy* for anti trust purpose does not requires any formalities or proof of an actual contract, with an offer, acceptances and consideration. All that need be shown is that two separate business entities participate in a common plan or design. Words of conspiracy are not necessary. Price fixing convictions affirmed where a single broker announced intention to his competitors to raise his commission rate saying that he "didn't care what others did."

2. In restraint of trade there are two rules:

The unreasonable restraints of trade are under the Rule of Reason. It is deemed to be unreasonable if has anti competitive effects.

What if competitive businesses agree to not compete. What if one of the businesses was for sale. What if agents agree not to buy or sell certain listings?

The Per Se Rule is the primary test employed to determine if a particular restraint is lawful. These can include price fixing, bid rigging and market divisions, certain group boycotts and certain tying arrangements. These restraints are presumptively anti competitive, and no inquiry into their reasonableness is necessary or permitted. The only issue is whether the defendant in fact participated in the alleged conspiracy.

What is considered an example of price fixing in our industry? How could you break the law?

Is it also per se illegal for competitors to agree upon the length of the listing, the type of listing accepted or the form of compensation?

What if two or more brokers agree to withhold their advertising from a newspaper? Why is this considered an illegal group boycott?

If a developers condition the sale of a home site to a builder on the condition that the builder "list back" the home built on the site with the developers brokerage firm, why is this considered an illegal tying agreement?



Misrepresentation

Misrepresentation of a material fact is fraud when a person relies on the misrepresentation as the truth in deciding to enter into a transaction. This is the cause of most of the lawsuits in Washington State. Ignorance will never hold up in a court of law. The condition of the property directly affects the value. The principles of value need to be weighed along with the condition and the amenities of the property. Withholding information because the agent doesn't think it would affect the buyer's decision or because the agent does not want to put the transaction in jeopardy could have disastrous results in the future.

Some agents have been heard to say, and seem to really believe, that if they are found in the wrong that the company's errors and omissions insurance or their corporate attorney will "get them off." That is not the case in many situations. If an agent intentionally commits fraud, there is no insurance that will protect him or cover the losses should there be a lawsuit. Agents may have an incredible amount of liability.

To assume that a party that feels damaged will not come after an agentis like assuming that a shark won't go after a vegetarian.

Active fraud is intentionally misrepresenting a material fact concerning a transaction. It includes statements made recklessly, incomplete statements designed to conceal a defect.

Passive fraud imposes liability for silence where there is a duty to speak.

Negligent misrepresentation imposes liability for affirmative false statements which the broker did not know were false, but should have known they were false. It involves an affirmative misstatement of fact.

Negligence imposes liability based upon the failure of the broker to discover a defect and advise the buyer of the defect. It involves silence in the face of a duty to speak.

Innocent misrepresentation imposes liability based upon the agent's misrepresentation of facts even though the agent had no reason to know that the represented facts were false. The Washington courts have refused to hold an agent liable for purely innocent misrepresentations. But, there is a fine line between what is considered innocent and what a broker *should* know.

Have you experienced a situation where an agent was intentionally misrepresenting a fact about a transaction?



Disclosure of Material Facts

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

The form is a vehicle for the seller to disclose any information about the structure and title of the property. If there are facts that are not asked on the form, the seller can attach additional pages.

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

According to the Law of Agency, Material Fact is defined as:

1. Information which substantially adversely affects the value of the property, or
2. Information that substantially adversely affects the party’s ability to perform its obligations in a real estate transaction, or
3. Information that operates to materially impair or defeat the purpose of the transaction.

A material fact that affects the value of the property could be a defect as a result of water damage which could affect the value or the buyer’s willingness to purchase.

The law takes into account not just a material fact from a buyer’s viewpoint, but also from the sellers. If the buyers cannot perform their obligations because of an undisclosed financial problem, this could be considered a material fact that should be disclosed.

A misrepresentation of fact must be material. A fact is material if a buyer would consider it in making a decision to buy or how much to offer. Some erroneous representations do not provide a basis for liability because they would not alter the judgment or actions of reasonable buyers.

EXAMPLE: A small error in stating the size of a property may not be considered misrepresentation of a material fact if the error was negligible. For example if the square footage of a house was stated as 2000 square feet when in fact it was only 1995 square feet, then the difference could be considered negligible. But, if the error was considerable, for example, over 20% from the true square footage, then the information *could* become material.

EXAMPLE: If a buyer purchased a property whereby there was a barking dog in the neighborhood that kept her awake at night. The fact that the sellers did not disclose the barking dog may not be material. If the seller had made complaints or signed petitions regarding the barking dog and didn’t disclose, then it could be material. If the dog was one of a hundred in a kennel just beyond the trees, the issue could escalate into a lawsuit. The point that it becomes material would be decided, most likely, in the court... not by a broker.

Statements of opinion are not considered material fact. Liability is based on false or misleading statements not just the opinion of a real estate licensee. But the determination of whether the information is solely an opinion or an opinion of a factually verifiable could fall into a gray area.

EXAMPLE: An agent’s statement that the market in the area is showing an increase in value and should continue to do so, may be considered an opinion. But, if the information the agent provided included opinions about the future zoning prospects, which were found to be unlikely, and the purchaser relied on the information in making the decision to buy, the information could be considered more of a misstatement of fact than opinion.

The point that the information becomes material could be decided, most likely, in the court. Often, before that time, the majority of the parties settle out of court. Whenever there is any kind of question about whether information would be considered material, or whether it should or must be disclosed by the seller or agent, then the broker must be consulted. It is when the purchaser believes that information was withheld or that they were misled, that they often sue for damages.

Residential Disclosures

The Property Information Disclosure Act RCW 64.06 was amended in the 2007 legislature to include changes on the environmental section of disclosure. The Disclosure form is part of the actual statute. In the NWMLS the form is commonly referred to as “Form 17.”

Prior to July 2007, a buyer could waive their right to receive the Property Information disclosure form under any circumstance. The amendment to the law prohibits the buyer from waiving the right to receive the newly entitled “Environmental” section of the form if the seller’s answer to any question in the “Environmental” section of the form is “yes.” Even if a buyer is willing to waive the right to receive a form, the seller must review the form to be certain that any answer in the “Environmental” section is not yes. If there is a reason for a seller to check “yes” on the form, then the seller must provide that section of the form to the buyer regardless if the buyer wants to waive the form.

The paragraph on the NWMLS inspection Form 35 reads:

The buyer waives the right to receive an amended Seller Disclosure Statement (NWMLS Form 17) pursuant to RCW 64.06 based on conditions identified in any inspection or inspection report(s) unless conditions identified in any inspection or inspection report(s) would require seller to change an answer in the “environmental” section of Form 17 to “yes.”

In addition, if the seller provides the buyer with a Form 17 and before closing conditions are discovered that would change an answer in the “Environmental” section of the form to “yes” then the seller must provide an amended Form 17 to the buyer. At that point the buyer has the right to (a) approve and accept the amendment, or (b) rescind the purchase and sale agreement within 3 days of receiving the amended form.

Vacant Land Disclosure

Some purchasers of residential property have been financially ruined and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property not disclosed by the seller who had actual knowledge of the presence of such materials before the sale. Current law exempts some sellers from the legal responsibility to disclose.

The Washington State Legislature amended the current Property Information Disclosure Act RCW 64.06 requiring the seller of unimproved property intended to be used for residential purposes provide sales disclosure forms on toxic materials on or buried in the property. There are no legal exemptions from such disclosure.

Property Information Disclosure Act RCW 64.06.005 under definitions amended to add:

- (2) “Residential Real Property” means both improved and unimproved residential real property.
- (3) “Seller disclosure statement” means the form to be completed by the seller of residential real property as prescribed by this chapter.
- (4) “Unimproved residential real property” means property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential times share, or a mobile or manufactured home.

Note that “zoning” is the line that determines who gets the form for “vacant land.” For example, an office building on property that is zoned for residential use would require a Vacant Land Disclosure.

Under the new law, a seller must give a property information disclosure form (NWMLS form 17C) to buyers of unimproved residential real property. The buyer has the right to waive the right to receive the form. If the seller has checked questions in the Environmental section, the seller must provide the form to the buyer. If there is a question on who is to provide or receive the form it is important to talk to your broker or corporate attorney.

Seller Inaccurate Disclosure

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

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

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

If a buyer discovers a defect and claims the cost to repair that defect, an economic loss, the terms of the transaction are documented in the sale agreement. The buyer is limited to any available contract remedies. The Property Information Disclosure form is “Not considered part of any written agreement between the buyer and the seller of residential property.” RCW 64.06.020(3) The disclosure form is for disclosure only.

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

So the Property Information Disclosure form, even if it contains errors, cannot support any claim for damages against the seller based on the Douglas v Visser and the Alejedre v Bull cases..

Negative Stigmas

In addition, the Law of Agency specifically addresses negative stigmas that may attach to a property. According to the law they are not material facts *an agent* is obligated to disclose.

“The Law of Agency states what is NOT considered a material fact:

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,
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.”

Consider the following questions regarding the definition.

What if there is a rumor about a burglary?

What if people say the property is haunted with a ghost?

What if the murder took place decades ago someplace outside?

What if the house might have been the site of illegal drug manufacturing?

What if the suicide did not result in death on the premises?

These types of negative stigmas are not considered material facts that must be disclosed by the agent. But, then comes the following types of questions... Many of which are roaming around without distinct answers. Today it would not be difficult to find attorneys that would represent either side! These questions include but are not limited to?

How can agent can “deal honestly and in good faith” if they are “hiding information?”

The information that the agent may be “hiding” could include information regarding the race or religion of the clients. Information regarding a protected class under federal, state and local fair housing laws is protected. An agent needs to be “honest” about the boundaries they must work within. It is a violation of the laws to discuss anything about the protected class information about a client.

Is the seller obligated to disclose information even though it is not on the Property Information Disclosure form?

The seller is “obligated” to disclose all material facts. A negative stigma may or may not be considered a material fact. According to the Law of Agency, the agent is not obligated to disclose negative stigmas but the Property Information Disclosure law does not include questions regarding them. It is often in the seller’s best interest to disclose if there is a probability that the buyer may believe the information was material. **If the buyer thinks a negative stigma would have affect his decision, he can still sue the seller and agent.**

Is there a difference if the agent represents the buyer or the seller?

Regardless of whether the agent represents the buyer or the seller, the agent is obligated to disclose material facts to all parties.

What if this information is disclosed and puts the transaction in jeopardy?

If the information is considered material, it is in the best interests of the parties to disclose. If there is a question as to whether it is material, then it is best to contact the broker or corporate attorney or the attorney to the seller or buyer.

What about sellers that do disclose the information about a negative stigma? How should it impact the value?

The amount that a negative stigma would impact the value would be determined by the buyers and the market. It could have a negative impact on the value, or in the case of a sensational or unusual circumstance, it could have positive impact on the value.

What if the agent knows information about a negative stigma that the seller is not aware of?

That could be possible because real estate licensees may have information regarding the neighborhood or the town that they have acquired over the time they have been working. If there is a question, the agent should contact their broker or corporate attorney.

What if one of the parties has AIDS or HIV and the agent is asked directly about their health?

AIDS (acquired immune deficiency syndrome) is a disease which has no known cure. It affects the body's ability to fight infection. Studies have shown that it is not contracted by causal contact. It has been established to be included as a handicap under the Federal Fair Housing Act. It is illegal to respond to questions regarding AIDS or HIV in a real estate situation.

Professionalism

A professional is considered a person in "one of a limited number of occupations or vocations involving specialized learning." A professional is "characterized by or conforming to the technical or ethical standards of a profession." This is according to Webster's Dictionary.

Essential elements of Professionalism

Professionals have a systematic body of theory or skill achieved through a lengthy process of training or education. It is a body of knowledge that can be drawn upon.

Professionals have authority based on superior knowledge. It is authority recognized by clientele.

Professionals have broad social sanction and approval to exercise this authority. There are certain powers and privileges including control over entry into the profession, licensing procedures, and confidentiality between professional and client (agency.)

Professionals have a code of ethics. Self discipline is the basis of self control.

Professionals are members of many formal and informal groups. Interaction of social required by the group that is unique to the profession.

Is real estate a profession? How is it progressing? Consider the following about the real estate industry...

Growing body of knowledge

Authority role of real estate agent legitimized (still have FSBO's)

Authority sanctioned by community

Self Discipline through REALTORS, PSMLA, Dept. of Licensing

Professional (trade) organizations

In the dog-eat-dog world of real estate, the ethical agent will choose not to act in a way that will bring harm to his fellow agents or clients in spite of the fact that harm may have been done to him in a similar situation. The ethical agent considers how his actions affect others and tries to steer a course that will do him the most good and others the least harm.

Protect your reputation. It takes a long time to build a good professional reputation with hard work and the right decisions day by day, deed by deed. One serious deviation from your usual high standard of behavior can change the way your fellow agents, not to mention buyers and sellers, perceive your conduct.

If you are not well informed on current market conditions and the basic rules, regulations and law then can you protect the interest of your clients?

You are an Expert

As far as the State of Washington is concerned, you are an expert. From the day you receive your license and act in any way as a real estate agent you are held to the standards of an attorney or the standards of the most competent of your peers.

What makes an expert?

Experience

Profit not only from your own experiences, but also from those of your colleagues. Keep learning...don't shut your eyes, your ears, your mind. Be alert and know what is going on around you. Be proactive and anticipate what might happen. Keep thinking, but don't be so deep in thought that you miss opportunities. Experience, when used wisely, will teach you to recognize situations and occasions that deserve a spot in your memory bank.

Education

The state currently says that we need 30 clock hours every 2 years. In order to cut hair the requirements include over 2000 hours of training. Our clients and customers expect us to know everything about financing, law, marketing and current trends in the real estate market. If we don't know the answer, let us be sure that we know where to find it.

Authority

What really makes you an expert is to allow yourself to be one. Behaving like an expert goes a long way to having your customers and clients perceive you as one. If this perception is backed by experience and education, you are an expert and truly a professional.

P.S. Keep your License

Just remember that Natalie Danielson is not an attorney. If you have any questions about the legal issues in the class contact an attorney that specializes in real estate.

If you want to “Keep YOUR License” please remember to get your clockhours. It is amazing how many real estate licensees do not turn in their renewal, turn it in without 30 hours or do not have the Core Curriculum class!

You are NOT licensed without your clock hours every 2 years. There is no “grace” period. I

If you find you are short the number of required hours or the state contacts you with a problems with your renewal, do not hesitate to call Natalie Danielson to get help to
“Keep YOUR License!”

Keep Your License Quiz

Section 1 Ethics and Values

1. The definition of _____ is the moral principles which determine the rightness or wrongness of particular acts according to Webster's Dictionary.
2. Real estate agents and their clients come from diverse backgrounds which may affect their _____.
3. If everyone did what I'm doing, would it be a _____ world?

Section 2 Rules and Regulations

4. The National Association of REALTORS adopted the _____ in 1913.
5. The Northwest Multiple Listing Association is also known as _____.
6. The multiple listing association CAN / CANNOT revoke the license of a real estate licensee.

Section 3 It's the Law

License Law

7. Who is responsible for administration of License Laws? _____
8. The Governor appoints the _____ of the Department of Licensing.
9. The website address for the Department of Licensing is _____.
10. The real estate _____ is made up of 6 people who are typically real estate brokers.
11. Commissioners serve _____ year terms.
12. The Director of the Department of Licensing has the authority to suspend or _____ a real estate license.
13. The Uniform Regulation of Business and Professions act provides for _____ procedures for enforcement of the laws.
14. Advertising that is false, _____, or misleading is a violation of the Law.

Law of Agency

15. Agency relationships can be created by express or _____ agreement.
16. A written agreement is considered an _____ agreement.
17. In Washington State, a broker to enforce a commission must have the agreement in _____ according to the Statute of Frauds.
18. When working with a buyer there is a presumption of _____ agency.
19. If an agent is the seller then they do not represent the buyer.
20. An agent can ask the buyer to waive the duty to disclose all material facts.
True/ False
21. A seller's agent must make a good faith and continuous effort to _____
22. A seller can waive the duty of the agent to be loyal to the seller.
23. In order to be a dual agent when showing or selling, the law requires that dual agency be agreed to in writing with terms of _____ .
24. If a buyers agent sells an in house listing, the broker is a _____ agent.
25. The agency relationship starts at the time the agent performs _____ services.
26. The agency relationship with the buyer ends at the time the property _____.

27. The _____ does not necessarily establish an agency relationship.
28. All commissions are to be paid directly to the _____ according to License Law.
29. The liability for acts of a salesperson under the broker is not limited under Vicarious Liability provision. True / False
30. According to the Vicarious Liability provision, the _____ is not liable for an error by the agent unless the principal participated.

Fair Housing

31. The Civil Rights Act of _____ making discrimination due to race or ancestry a federal offense.
32. The Federal Fair Housing Act was first passed in what year? _____
33. A person that cannot perform manual tasks could be considered _____ under the Federal Fair Housing Act.
34. AIDS is included under the protected class of _____.
35. Familial Status includes families with individuals under the age of _____.
36. The words “near St Mark’s Cathedral” in a real estate ad are a violation of the Federal Fair Housing Act. True / False
37. There IS / IS NOT a complete list of discriminatory words to avoid in ads.
38. Washington State has a law that prohibits discrimination. Yes / NO
39. Three examples of protected classes in other jurisdictions include
a) _____ b) _____ c) _____.
40. A “perfect family” could include a person that is a _____ offender.

Anti Trust Act

41. The Sherman Anti Trust Act is designed to preserve free _____.
42. Fixing standard commissions by real estate brokers is considered a violation of the Anti Trust Act.

Misrepresentation

43. _____ will never hold up in a court of law.
44. To assume that a party will not come after an agent for misrepresentation is like assuming that a shark won’t go after a _____.
45. Intentionally misrepresenting a material fact is considered _____ fraud.
46. Washington State courts have refused to hold an agent liable for purely _____ misrepresentations.
47. There is a fine line to what is considered innocent and what a broker must know.
48. A material fact is defined in what law? _____
49. If the representation would not affect the judgment or actions of reasonable buyers then the agent might not be liable. True / False
50. Statements of opinion ARE / ARE NOT considered material fact.
51. Negative stigmas ARE / ARE NOT considered material facts according to the Law of Agency.
52. The buyer can sue if a murder that was committed in the house was not disclosed even though the agency law says it is NOT a material fact.
Yes / NO
53. It is a violation of the Fair Housing laws to disclose the race of a client even though the agent wants to answer the question “honestly.” True / False
54. If you do not have the required amount of hours when you renew your license then you are NOT licensed. True / False

Answer Sheet... Keep Your License

1		31	
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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, 13148 Holmes Pt Dr NE, Kirkland WA 98034 Email: clockhours@gmail.com

Mandatory Evaluation

You can mail by US Mail the paperwork and tuition or Scan

Did you read the material in the booklet on this date? YES / NO

Did you complete the quiz for the course? YES / NO

Did you pay tuition using the payment link on the website? YES / NO

Did you attach the answer sheet for the quiz? YES / NO

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

A "clock hour" is 50 minutes. A 7.5 hour class should take near 6hr 15 min to take. How long did it take you to complete the course? _____

No Yes

Will the material you learned improve your performance?	1	2	3	4	5
Were the course materials easy to follow?	1	2	3	4	5
Were the course materials relevant to your profession?	1	2	3	4	5
Were your objectives met by attending the class?	1	2	3	4	5
Was the course material interesting?	1	2	3	4	5

What are 3 things that you learned from the course?

- 1.
- 2.
- 3.

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

Keep Your License	
Print Name	Signature
Company	Address
City / Zip Code	home _____ or work _____ check one
Email	Phone
License Renewal Date	Date(s) Class taken

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

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