Commercial Core Curriculum

Current Issues

2022-2023

By Natalie Danielson

Current Issues Course Leaning toward on Commercial issues
Satisfies the Core Curriculum for ALL Washington State Licensees

PROFESSIONAL Direction

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Clockhours by Email

1. You will be provided with a booklet of with the class material here in a pdf format.
2. The course has been divided up into sessions. In Washington State a "clock hour" is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
3. ***Answer*** the questions on the quiz sheet.
4. If you have any questions regarding the material or the questions, don't hesitate to email Natalie Danielson.
5. ***Email*** Quiz and Evaluation to Professional Direction. clockhours@gmail.com
6. The certificate will be emailed ASAP after receipt of quiz and evaluation. If you are desperate… just email us!!!!

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

Thanks! *Natalie Danielson*

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Session Hours	Major Topics	Objective
1 **45 min**	**Legislative Update**	**1. . National Legislative Issues** a. 1031 Tax Deferred Exchanges b. Opportunity zones c. Tax Benefits for investors in Opportunity zones d. Cannabis and real estate Federal funds and Cannabis Insurance impacts to building used by cannabis companies **2. Washington Legislative Issues** a. Buildable lands and Homeless funding b. Increasing Urban Density c. Property Disclosure Added d. Landlord and tenant law Changes e. Rent Backs fall under Just Cause eviction Law
2 **45 min**	**Legal Update**	**1. Common Broker Issues** a. Agency Relationships b. Transaction logs c. Rookie Brokers **2. Seller Disclosure** **a.** Buyer Beware lawsuit b. Brokers obligation to convey offer c. Broker responsibility Drafting contracts

		2. Competition in Commercial Brokerage a. DOJ reviewing commissions and anti-trust
3 **1.5 hours**	**Business Practices Professional Standards**	**1. Organizational structures, Roles and Responsibilities** a. Working in a team environment b . Licensee status as Independent Contractor c. Broker Personal Safety d. DOL New Renewal Process **2. Commercial Real Estate Practices** a. Commercial Property Valuation b. Commercial Leasing c. Anatomy of a Commercial Lease d. Commercial Property Management d. Professional Cooperation **3. Risk Avoidance** a. Commercial Transaction Forms b. Statute of Frauds c. Off Market Transactions d. Making Referrals e. No Kickbacks from Title Companies f. Implications of multi state transactions **4 Real Estate Advertising** a. Firm Name Required on All Advertising b. Assumed Names c. Internet Advertising d. Contaminated sites e. How to market non exclusive listings f. Tenant/ buyer or Landlord/seller representation agreements

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The Core Curriculum is a required course for every real estate broker renewal every two years. Brokers can choose the Core Curriculum with a residential focus OR the Commercial Core Curriculum to satisfy the requirement for the 3 clockhour Core Curriculum. The Curriculums are written by committee by the Department of Licensing with updated material every two years. This class focuses on major sections that were determined to have an impact on the business of the real estate broker and the consumer. If you have legal questions, these must be directed to your Designated Broker or the corporate attorney.

Course Objectives

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

- Identify real estate national and state legislative issues including Tax Deferred Exchanges and Opportunity Zones
- Know that there have been significant changes to the state Landlord Tenant Act.
- Understand the license and agency law requirements for dual agency, transaction logs and new brokers.
- Identify court cases focusing on buyer beware, conveying offers and consumer protection act.
- Know the issues the Dept of Justice is investigating regarding brokers commission.
- Identify organization structure issues including teams and independent contractor status.
- Know the anatomy of a commercial lease and property managment.
- Know the requirements for disclosure on advertising.

Legislative Updates

1. National Legislative Issues

a. 1031 Tax Deferred Exchange

Like-kind exchanges are a tax-deferred transaction that allows for the selling of an asset and the purchasing of another similar asset, without generating a capital gains tax bill from the sale of the first asset. Like-kind exchanges are also known as a 1031 Exchange, after Section 1031 in the U.S. tax code. They have been done for about 100 years. The Build Better Back bill eliminated changes to the current laws as of September 2021.

In order for an exchange to qualify under 1031, there must be an exchange of property that was held for the productive use in a trade or business or for investment solely for property of a like kind to be held either for productive use in a trade or business or for investment. Property that cannot be exchanged under 1031 includes stocks, bonds, notes, and partial interests in partnerships. In addition, any property exchanged must be of like-kind. The definition of like-kind real property is extremely liberal under 1031. A taxpayer is allowed to utilize a qualified intermediary providing taxpayers more time to identify desired property.

There is a strict 180-day policy when identifying and exchanging 1031 property. If a taxpayer fails to complete the transaction within 180 days, the gain is recognized and included in taxable income. A taxpayer interested in a like-kind exchange has 45 days to identify potential replacement properties once the transfer of their relinquished property has closed. The exchanger also has 180 days from the time they relinquished their property to acquire replacement property. Roughly 40% of tax deferred exchanges include rental housing.

The current draft of the Build Back Better bill allows that the maximum capital gains rate would increase to 25% from the current rate of 20%. The income level that this capital gains rate bracket applies to would be aligned with the new 39.6% rate bracket. These rates would also apply to qualified dividends.

b. Qualified Opportunity Zones

The qualified Opportunity Zone "QOZ" program was created by the 2017 tax cuts and Jobs Act to encourage economic growth in underserved communities through tax incentives for investors who utilize "opportunity Funds" to invest in the Zones. Along with tax benefits, it presents opportunities for real estate investment and development in those communicate communities. United States and territories including Washington DC nominated areas to be designated as a QOZ in 2018. The IRS and treasury finalized the designations that year. EU S Treasury Department and the IRS are currently conducting notice and comment rulemaking to finalize regulation for the program this is a temporary program set to fully sunset on December 31st, 2047.

c. Tax benefits for Investors

There are multiple tax benefits available to investors who invest in QOZ, if all the requirements are met.

First, capital gains reinvested within 180 days in a QOZ are tax free for up to nine years through 2026. If that initial investment is held for five years, the tax ultimately paid on it is reduced by 10%.

If it is held for seven years, it is reduced by 15%.

If they are held for at least 10 years, gains accrued on deferred gains funds while invested in a QOZ are tax free.

Those investments must be processed through an "opportunity fund" which is a partnership, or corporation organized for the purpose of investing in a QOZ property. These funds self-certified and must hold at least 90% of their assets in QOZ property (which includes stock, partnership interests, and/or tangible property used in a trade of business in a QOZ, such as real estate.

d. Cannabis and Real Estate

Pro's and Cons of cannabis occupancy in a building
Marijuana is illegal under federal law. There are currently about 36 states that allow use of it either medically and or recreational. Federal law preempts state laws. The cannabis industry is growing exponentially even with the uncertainty and regulations. Owners and managers of real estate should be well versed in the state and local regulations and aware of the challenges under federal law.

Banking
Because cannabis is illegal under federal law, it is an illegal controlled substance, so federally insured banks are barred from accepting funds from them. If they do, they could be at risk of violating anti-money laundering laws.

There are some banks and credit unions that work with cannabis businesses in Washington State. Some cannabis businesses use rypto currency like Bitcoin.

In April 2021 the US House of Representatives passed legislation that would allow banks to provide services to cannabis companies in states where it is legal. Lawmakers voted 321-101 to approve the bill. It was sent to the Senate. It clarifies that proceeds from legitimate cannabis businessesses would not be considered illegal and directs federal regulators to craft rules for how they would supervise such banking activity.

Utility costs
Cannabis businesses typically use excessive electricity and water. There could be issues with fire, electrical blowouts and mold in growing operations.

Rents
Owners and property owners who choose to lease property to grow operations who are willing to take the risks associated with the industry, have earned premium rents. Most businesses are successful as the industry grows.

Security
A cannabis business can attract some unique security issues. There may be extra security needed which may include cameras and security guards.

2. Washington Legislative Issues

a. Buildable Lands and Homeless Funding

Senate Bill 5254 passed in 2017 to endure adequacy of buildable lands and zoning in urban growth areas and to provide funding for low-income housing and homelessness programs. It modified timelines and factors in the review and evaluation program in the Growth Management Act. **T**he Buildable Lands Program is a part of Washington State's Growth Management Act (GMA)**.** In 2017, E2SSB 5254 was passed by the Washington State Legislature and constituted the first major revision to the program since its inception in 1997. The 2018 Buildable Lands Guidelines are also the first update since they were published in 2000.

The Buildable Lands Guidelines are available at
https://deptofcommerce.box.com/shared/static/3admh8ew6olyoqh48js4v6fs4lzcu664.pdf

Senate Bill 5254 also created a property tax exemption program for cities and counties to preserve affordable housing for low-income households.
In addition, it extended the $40 surcharge until the year 2029 for local homeless housing and assistance. The funds collected pursuant to this section are to be distributed and used as follows:

> Collection of the fee and distribution of funds, administrative costs related to homeless housing plan, home security fund account, private rental housing payments, operate, repair and staff shelters, emergency assistance, youth shelters, grants and voucher designated for victims of human trafficking and their families.The surcharge does not apply to assignments or substitution of previously recorded deeds of trust, documents recording birth marriage, divorce, or death, any recorded documents other exempted under law, documents recording a government lien.

b. Increasing Urban Density

The legislature passed HB 1923 effective July 2019 to create a menu of local options for density, including affordable housing considerations.
Cities planning under the Growth Management Act (GMA) are encouraged to take two or more of given actions to increase residential building capacity.
The bills lists a dozen options. These include briefly:

> Authorize development of higher density in areas where there is transportation.
> Authorize more options for duplex, triplex, courtyard apartment, cluster zoning, accessory dwelling units in single family residential areas.
> Adopt a subarea plan pursuant to SEPA.
> Adopt increases in exemptions to infill development provisions of SEPA
> Adopt form-based code in zoning districts that permit single family residences
> Allow for the division of land into maximum number of lots
> Authorize a next density of six dwelling units per acre in residential zones.

The text of the bill is found at:
https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/1923-S2.E%20HBR%20FBR%2019.pdf?q=20211102124600

c. Washington Real Estate Disclosures Added

Seller disclosure requirement for improved and unimproved residential properties were amended to require disclosures regarding smoke detection devices, oil tank insurance, and proximity to a working forest. It became effective January 2020.

The WA Right to Farm Act includes certain protections to farms and forest lands from nuisance lawsuits. Forest land includes land where a merchantable stand of trees is located even if it is managed passively, and the owner does not indicate it as a working forest. As long as it is not being actively used for a use that is incompatible with timber growing. The disclosure from a seller must include a statement regarding the protections for certain agricultural practices.

Following a sale, the home seller must provide at least one smoke detection device before the property is occupied. The owner can be fined if they fail to install one and a fire causes property damage, personal injury or death to a tenant or member of a tenant's household.

Following a rental, a tenant and landlord can be fined for not maintaining or installing a smoke detection device. Licensed real estate brokers, non profits, or individuals who have voluntarily assisted in installing a smoke detection device in a unit are not liable for the failure of any seller or other property owners compliance. The act is called the Greg "Gibby" Bibson Home Fire Safety Act and took effect July 2019.

d. Landlord Tenant Law Changes

In March 2020, due to the Covid 19 pandemic, Washington State Governor Inslee issued a proclamation to prohibit a number of activities related to evictions by all residential landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions. The legislature in WA has passed a number of bills to protect tenants and help with keeping more tenants in housing. In addition to the changes affecting the state, local jurisdictions also have passed laws affecting property management. This is just a summary of the bills that in some cases are many pages long. They can be accessed by Googling the bill number and the word tenant.

Late rent Pay or Vacate notice

Twenty six states have longer than WA State's 3 day pay or vacate notices prior to eviction. In July 2019, this was increased to 14 days. The Landlord must wait 2 weeks to start the eviction process. There is now a uniform eviction notice available to landlords written in plain language including information on civil legal aid resources available. It is a mandatory form required that is in multiple languages and must be in plain language.
Change in rent notice extended from 30 to 60 days.
Any tenant payment mut apply to rent prior to any other charges.
Landlord must provide documentation for any damages.
Additional reforms to the eviction process in the bill include the use of judicial discretion in non payment of rent cases, requiring considerationor factors beyond the tenants' control. In certain cases, landlords will be able to access the Dept of Commerce's mitigation fund for reimbursement of any shortfall in rent. SB 5600 Effective July 2019

Increasing rent

The timeline to raise rent has been extended to 60 days no matter how small or large the increase. This includes any increase to base rent as well as other reoccurring fess no defined as rent. The increase cannot become effective prior to the completion of the term of the rental agreement.
HB 1440 Effective July 2019

Notice when Converting Use of Rental

Requires Landlords to provide a minimum 120-days written notice for a termination of tenancy when converting use, demolishing the property or doing substantial rehabilitation, or changing the use of the premises. If Landlord fails to provide this notice, they could be liable for up to three times (3x) the monthly rent to the tenant. HB 1462 Effective July 2019

Military Rental Termination

The military clause clarifies the condition where service members can terminate rental agreements early or with less notice. The notice changes to 20 days after receiving orders. The tenant must provide a copy of the military orders. HB 1138

Right to Counsel for Indigent Defendants

Subject to funding, indigent tenants in filed eviction cases can ask the court to appoint a lawyer to help them. A person is "indigent" if they receive public assistance or their annual income, after taxes, is at or less than 200% of the federal poverty guidelines.

Standards for Initial Payment Plans Landlords must offer Tenants

Landlords, upon receipt of a tenant's written request, must permit the tenant to pay deposits, nonrefundable fees, and last month's rent in installments.

Rental period of 3 months or long, the tenant may elect to pay in 3 equal installments

In all other cases, tenant may elect to pay in two equal installments.

A landlord is not required to permit a tenant to pay in installments if all the deposits and fees do not exceed 25% or the first full months rent and payment of the last months rent is not required.

A landlord who refuses monthly installments is subject to a penalty of one months rent plus attorney fees.

If the tenant defaulted, the court must determine if they are low income or experiencing hardship to see if the landlord is eligible for Landlord Mitigation Program. HB 1694 Effective June 2020

Grace Period Prior to Assessing Late Fees

The landlord may not charge late fees for rent that is paid within 5 days following its due date. The tenant may propose that the due date for rent be altered to a different date if the tenant is able to show primary income is not received until after the date rent is due. HB 2535 Effective June 2020

Tenant Protection during public health emergencies, Legal representation, access to state rental assistance programs.

For any rent fees or other charges assessed to a tenant that became due between March 2020 and December 31, 2021 the following rules apply:
Landlord prohibited from imposing late fees on debt, reporting the delinquency or an unlawful detainer based upon the debt to a prospective landlord,
Landlord is prohibited from inquiring about or considering disclosure of a prospective tenant medical records unless to evaluate a reasonable accommodation or modification.
A prospective landlord is prohibited from taking adverse for prospective Tenant's nonpayment, denying discouraging application or make unavailable a rental based on prospective tenant's medical history including prior or current exposure or infection to Covid 19.

Landlords must give "Just Cause" for Eviction

This is a law that affects almost all tenancy. It makes it much more difficult and extends timelines for landlords to evict tenants. Landlords cannot just evict a tenant for no reason. The moratoriums are ending, and this extends time limits and creates requirements to protect tenants.

In this new law, landlords must give tenants one of 16 good reasons for ending rental agreements and evicting tenants. Among other things, this means there are no more 20-day notices to vacate for no reason. Before, landlords could refuse to renew month-to-month agreements for no reason, except in a few Washington cities.
These causes include failure to pay rent, landlord seeks possession (90 day notice), committing waste or unlawful activity, owner sells (90 day notice), Property demolished (120 day notice), property condemned, owner elects to stop renting premises (120 day notice), rental agreement expired and tenant doesn't renew, breach of subsidized housing requirement, required to register as sex offender during tenancy (60 day notice) and more.

If a tenant fails to pay rent, then there is a process that begins with notice, offering a repayment plan and then the Resolution Pilot Program prior to any efforts to evict a tenant. If the landlord and tenant fail then, the landlord file an unlawful detainer action. This process takes many months. The text of the law is very lengthy and difficult to follow. If a client gets into this situation, make sure you refer them to an attorney who specializes in this line of work. The new Just Cause Landlord Tenant Law can be found at: RCW 59.18 Eviction of tenant, refusal to continue tenancy, end of periodic tenancy-Cause-Notice-Penalties. HB 1236 Effective April 2021

Eviction Resolution Pilot Program ERP

The Eviction Resolution Pilot Program (ERP) was mandated and applies to all counties in the state. The objective of the ERP is to bring all parties to the table with trained eviction specialists, explore the amount of rent in arrears and circumstances, and discover a rang of other terms that might move to resolve the matter.
Prior to filing an unlawful detainer action for non payment of rent, landlord must provide notice to the tenant informing them of the ERP along with a 14 day termination notice for nonpayment. This is not an option.
The ERP notice must include the following:

- Contact information for dispute resolution center, counting housing justice project or housing advocacy services.
- Notice that the information on multiple languages and tenant information on finding a lawyer is available
- The contact info or the landlord or the landlord's attorney
- The statement "failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

Landlord Mitigation for Unpaid Rent

If tenant defaults on debt owed under repayment plan, the landlord may apply for reimbursement from the landlord mitigation program or file an unlawful detainer action subject to ERPP. SB 5160 Effective April 2021

"Rent Backs" Fall Under Landlord Tenant Laws

If a buyer allows the seller to occupy the property after closing for one day or more, the buyer becomes a landlord. The same is true if a seller gives the keys to a buyer prior to closing! Trying to evict a seller or buyer as a tenant can take many months. Legal requirements must be met from offering a repayment plan to Eviction Resolution Mitigation. If the seller/tenant was offered occupancy without rent, this can become more complicated because what is the rent that must be negotiated in a repayment plan? There is an issue with giving notice. If there is a landlord/tenant agreement before or after closing, there was previous notice to meet the deadlines.

As the eviction moratoriums are going away as the pandemic wanes, the laws are becoming very strict to protect the tenants from becoming homeless.

Even though the NWMLS has forms 65 for occupancy prior and after closing, it is best for a broker to refer any buyer or seller to obtain legal advice prior to agreeing. The seller or buyer as a tenant could be in a situation through no fault of their own where they cannot move! It can become very complicated. There is a Legal Hotline video on Youtube at https://youtu.be/Yz7Gt3bZq5U

If you are involved in property management, it is important to know the laws that have been designed to help protect tenants. These are state laws affecting all jurisdictions. In the City of Seattle, there are other protections and landlord tenant changes.

As the eviction moratorium in the state and local jurisdictions, there will be tenants who have accumulated debt. There are programs to help tenants and landlords. It is best to consult an attorney if you are faced with needing to evict a tenant.

Legal Update

1. Common Broker Issues

a. Agency Relationships in Commercial Transactions

According to the Law of Agency, the agent is presumed to be a buyer's/tenants agent at the time he or she performs brokerage services. Therefore, when a prospective buyer walks into the door of the real estate office, when the agent performs brokerage services, the agent becomes an agent of the buyer. "Real estate brokerage services" means real estate services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation, or by a licensee on the licensee's own behalf.

This agency relationship is presumed initially until disclosed in writing. Though there are disclosure forms and buyer agency contracts used throughout Washington State which avoid unintended dual agency.

Amendments to the Law of Agency read:

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

Some agents read this as just checking the agency disclosure on the purchase and sale agreement. Agency must be disclosed when the agent performs real estate brokerage services so there is no confusion as to who the agent represents.

Real estate agents must provide a pamphlet on the law of real estate agency to all parties to whom the licensee renders real estate brokerage services before the party;

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

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

b. Transaction Logs

Washington state law RCW 18.85.285 requires that all FIRMS have complete transaction logs. The verbiage is as follows:

"Brokers and managing brokers must submit complete copies of their transactions to their firm. The designated broker shall keep adequate records of all real estate transactions handled by or through the firm or firms to which the designated broker is registered. The records shall include, but are not limited to, a copy of the purchase and sale agreement, earnest money receipt, and an itemization of the receipts and disbursements with each transaction. These records and all other records specified by the director by rule are open to inspection by the director or the director's authorized representatives."

The Administrative Code WAC308-124C-110 details the required records that the designated broker must keep.

Financial records including trust account records and bank records, duplicate receipts, check register/stubs, verified bank deposits, accounting ledger for all moneys received or disbursed, separated ledger for each tenant.

Documents that must be retained include:

- An accurate up to date log of all agreements or contracts for brokerages services submitted by firms affiliated licensees.
- A legible copy of the transaction or contracts for brokerage servicesshall be retained in each participating real estate firms files
- A transaction folder containing all agreements, receipts contracts documents leases, closing documents and material correspondence for each real estate or business opportunity transaction and for any rental, lease, contract or mortgage collection account.
- All required records shall be maintained at one location where the firm is licensed. This location maybe the main or any branch office. Audits are now held digitally/remotely by the Dept of Licensing.

The required documents include the type of real estate brokerage services provided, identify the parties, and all correspondence. Correspondence can be critical in proving what happened during a transaction. This can include text, emails, letters, handwritten notes and social media.

Documentation that must be submitted by brokers to the designated broker include files for transactions that DO NOT CLOSE! This is because the DOL can get complaints from consumers regarding transactions regardless of whether they close or not.

c. Rookie Brokers

Real estate brokers who have been in business for less than 2 years must have their transactions reviewed by the designated broker or a managing broker who has been delegated this responsibility. When the new brokers renew their license in two years, they ar required to take 90 clockhours of instruction.

2. Case Studies

a. Seller disclosure versus Caveat Emptor in the Douglas v. Visser case

On February 25, 2013, the Court of Appeals decided Douglas v. Visser. In that case, the Terry Visser, a *real estate broker,* and his wife purchased a fixer house in Blaine with the intent to fix and rent it. Much of the structure of the house was rotten to the point that the workers could not get nails to hold. The seller told them to make it look good and cover it up so that it could be sold. The seller checked "no" and "don't know" on many items on the Property Information Disclosure report. The Buyer asked for more information and a copy of the sellers pre-purchase inspection. The Seller hand wrote some answers and didn't provide the previous inspection. The Buyers hired a home inspector who noted three small areas of rot. But the inspection report said that they were not structural and that the buyer should deal with them if the rot spread. After closing, the buyers discovered that the house was uninhabitable and essentially had to be rebuilt from scratch. They sued the seller.

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

Buyers in residential transactions receive Property Information Disclosure statements from the seller according to state law. Most buyers assume that these are accurate and rely on them. The Property Information Disclosure form is "Not considered part of any written agreement between the buyer and the seller of residential property." The disclosure form is for disclosure only. Brokers have the duty to disclose all material facts actually known by the broker according to the Law of Agency.

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**. **It is more important now for buyers to be advised to conduct thorough inspections prior to purchasing.**

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

The 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."

b. Brokers obligation to convey offer to client is limited in the Beauregards Case

The **Beauregards** retained Riley to list and sell their property in Bellevue, Washington. Riley is a realtor with Windermere Real Estate/East, Inc. in Bellevue. During Riley's initial meeting with the Beauregards at their Bellevue home, the Beauregards mentioned they were also considering another real estate broker. Ultimately the Beauregards chose Riley because she estimated the property could be listed at $ 2,488,000, higher than the other agent's estimate. Riley recalls merely "shar[ing] with them that other clients ... were buying a similar sized home one block over that was listed at $ 2,488,000" and offered that amount as an example, only after the Beauregards insisted on her opinion. The Beauregards maintain that Riley inflated the price to induce them to enter the Exclusive Sale and Listing Agreement (the Listing Agreement).

Ms. Beauregard told Riley that, if they did not get offers within their desired price range, they were also interested in renting their property. Riley concedes this alternative was discussed, but the Listing Agreement contracts Riley to "sell" the property, and specifically indicates that the "[f]irm need not submit to Seller any offers to lease, rent, execute an option to purchase, or enter into any agreement other than for immediate sale of the Property."

The parties signed the Listing Agreement on November 11, 2015. The Listing Agreement did not include a list price, but listed the property as viewable by "Appointment," "Call Listing Office," and through the "Multiple Listing Service (MLS) Keybox." Riley also listed the property as owner-occupied despite it being vacant because for "premier properties," Riley prefers to go to the property before a showing, turn on the lights and heat, discuss key features of the home with the buyer's broker, and ensure the doors are locked after the showing. Additionally, Riley maintains that the property was not truly vacant because some of the Beauregards' furniture was present, and a vacant property is more susceptible to theft. The Beauregards maintain that Riley never fully explained to them that the property was listed as owner-occupied or as viewable by appointment, and had they known, the Beauregards would have never agreed to those terms. Those terms, however, were clearly listed in the Listing Agreement signed by the Beauregards. ¶ 6 On December 4, 2015, Riley e-mailed the Beauregards, recommending a list price between $ 1,950,000 and $ 2,150,000. Ms. Beauregard replied that she thought they had discussed a higher starting price range. Riley arrived at the suggested list price after conducting market research, which included two comparable properties in the same neighborhood. The first was listed for $ 2,488,000, but sold for $ 2,285,000. The second was listed for $ 2,249,000, but sold for $ 2,175,000. The property is a stacked three level floorplan, lacking an open floorplan, and with recent market preference trending towards open floorplans, Riley suggested a lower list price to compensate for the market trends. The Beauregards disagreed with Riley's recommendation and the property was listed for $ 2,288,000 with a $ 5,000 "paint/deck stain credit" and went active on December 9, 2015.

The parties characterize the discussions about listing the property over the holiday period differently. The Beauregards maintain they contacted Riley about delisting the property over the holiday season, but Riley never responded because she was vacationing in France. Riley maintains that there was less inventory on the market, and listing over the holiday period would capitalize on buyers trying to relocate before the New Year.

During the months following the initial listing, Riley's office hosted at least 18 open houses at the property. No prospective buyers submitted offers during that period. The Beauregards contend that the lack of offers was because Riley failed to follow-up with prospective buyers and used old photographs in the listing. At several points during her representation, Riley recommended that the Beauregards drop the list price because other nearby properties had recently lowered their prices and attracted buyers. On February 3, 2016, the Beauregards agreed to reduce the price to $ 2,173,000, stating "[w]e had always felt the 2.28 was ambitious, but wanted to try it." Riley recommended a further price reduction on March 20, 2016, to $ 1,998,000, but the Beauregards disagreed. ¶ 9 On March 6, 2016, the Beauregards notified Riley they wanted to switch real estate agents because they felt Riley was not following up with prospective buyers and had

too many other listings in the Bellevue area. Riley convinced the Beauregards to give her a second chance. Riley and the Beauregards made several changes to the property and updated the listing photos, which showcased the re-sodded backyard, the exterior paint job, and updated interior photos.

Ultimately, the Beauregards terminated their Listing Agreement with Riley in April 2016, and entered a new agreement with Nancy Klinck. The property sold on August 17, 2016 for $ 1,850,000.

The Beauregards filed their complaint alleging Riley breached statutory duties, was negligent, and violated the CPA. The Beauregards advanced a theory that Riley's cumulative breaches caused their property to remain on the market for too long, leading to low offers from prospective buyers. They claimed that Riley fraudulently induced them to enter the Listing by inflating the value of their property to $ 2,488,000, which was an unfair and deceptive act under the CPA.

During discovery, the Beauregards recovered an e-mail from another broker with Windermere, sent to Riley on April 6, 2016. The email read: "Shot in the dark but wondering if your client at XXX, Bellevue 98004 might be interested in renting their house as appose [sic] to selling, I have a friend moving from SF in mid June looking for a rental to get acquainted with the area. He and his family are looking in West Bellevue area like Clyde Hill, Medina, Hunts point, Yarrow point and surrounding. $ 3500/mo is his target monthly2000+ sq/ftHouse2+ bedrooms. He is willing to sweeten the offer by paying cash in full for a year if needed and looking for 1-2 year." Riley replied that the Beauregards were not interested in renting the property. Ultimately, the prospective renter never rented a property in Bellevue, and stayed in a hotel only for a couple of months before moving back to San Francisco. The Beauregards contend Riley was required by RCW 18.86.030(1)(c) to inform them of this "offer" to rent their property, failed to do so, and if this "offer" was conveyed, they would have accepted.

The Beauregards argue that Riley breached her duty by:

> (1) inducing them to enter the listing agreement dated November 11, 2015 by way of negligent pricing advice by proposing a value of $ 2,400,000, (2) advising them to list their home at an unmarketable value of $ 2,288,000 and bad pricing thereafter, (3) failing to clearly discuss the advertised listing terms including orally clarifying that other agents would be informed of the suggestion for appointment, (4) informing other agents that she should be contacted prior to any viewings, (5) recommending that the Beauregards list their home over the dormant holiday season, (6) failing to respond to the Beauregards inquiry of December 21, 2015 about de-listing the home over the holidays, (7) utilizing old photos of the 2013 listing that were not representative of the home at the time of current marketing, (8) failing to follow up with interest [sic] buyers in the spring of 2016, (9) failing to inform the Beauregards of the April 6, 2016 offer to rent their home for a 2-years [sic] lump sum cash payment, and (10) elevating her own financial incentives over and above the Beauregards express and/or implied goals.

The statutory duty to convey all "written offers, written notices and other written communications" is triggered once a broker is rendering "real estate brokerage services." RCW 18.86.030(1)(c). The amendment to chapter 18.86 makes clear that "[t]he duties under this chapter are statutory duties and not fiduciary duties. This chapter supersedes the fiduciary duties of an agent to a principal under the common law." RCW 18.86.110.

Brokers owe these duties "to all parties whom the broker renders real estate brokerage services." RCW 18.86.030. "Real estate brokerage services" is defined as "the rendering of services for which a real estate license is required under chapter 18.85 RCW." Chapter 18.85, which governs real estate licensure, defines "real estate brokerage services" to mean "any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation." RCW 18.85.011(17). Thus, while the statute explains that the duties are not waivable, they are owed when only a broker is acting for "compensation or the promise or expectation of compensation."

In the e-mail Riley received, it specifically asked if the Beauregards would be interested in renting their house, as opposed to selling. The e-mail communication does not fall within the "real estate brokerage services" that the Beauregards contracted with Riley because the broker clearly indicated that the interested party only wanted to rent the property. Since Riley's scope of agency was limited to selling the property, Riley was not expecting compensation from renting the property. Therefore, Riley did not have a duty to communicate the rental inquiry.

c. Washington Consumer Protection Act and Drafting of Contracts under Edmonds case

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

John L. Scott's general counsel unilaterally determined, without investigation, that the drainage problem had been fixed. He declared Edmonds in default and disbursed half of her earnest money to the sellers and half to the agents involved in the transaction. Edmonds sued.

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

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

The court found that the listing agent failed to disclose material facts by failing to disclose the extent of the drainage work that had been performed prior to Edmonds' signing the earnest money agreement and by presenting a property information form containing statements she and the buyer's agent knew were false. These acts by Zimmerman, the court found, violated the CPA.

The trial court's conclusion that buyer's agent was negligent in preparing the earnest money agreement. The court found that to protect Edmonds' desire for a dry basement, the buyer's agent inserted the following language into the inspection contingency addendum to the earnest money agreement: "Seller to furnish copy of warranty for drainage work done." The court also found that the buyer's agent prepared the notice of disapproval of inspection report and intentionally omitted the basement water problem from the notice, telling Edmonds that it did not need to be included because she was already protected by the language he had added to the inspection contingency addendum.

The court concluded that these actions by her agent fell below the standard of care of an attorney in preparing legal documents relating to the purchase of a residence.

Licensed real estate brokers, when completing earnest money agreements, are required to comply with the standard of care of a practicing attorney according to the Heritage House case. The language the buyer's agent inserted in the earnest money agreement was insufficient to protect Edmonds' interests with respect to the water problem and fell below the standard of care of a reasonable and prudent attorney in preparing a purchase and sale agreement. To protect Edmonds' interests, there should have been an identification of who was doing what work, the right to inspect the work, and to specify when the work was to be completed, the right to require that the work be done to the buyer's satisfaction, an assurance that the warranty was assignable to her, and the availability of other remedies. Further, as illustrated by this litigation, the language inserted by her agent was entirely insufficient to protect Edmonds' interest in purchasing a house with a dry basement.

The court also found that listing agent breached the earnest money agreement by failing to deliver the warranties as to the drainage work. In addition, the court found that Scott's disbursement of the earnest money constituted conversion, a breach of fiduciary duty, and a violation of the CPA.

Disbursement of the earnest money without a written release is permitted only when the agreement terminates according to its own terms. An agreement terminates by its own terms only upon the happening of an event specifically identified in the agreement as one that will cause such termination.

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

3. Competition in Commercial Brokerage

Dept of Justice investigating Compensation Anti-trust

The real estate industry is rocked across the country with the largest class action lawsuit in the US> It is against the National Association of REALTORS and most of the top real estate franchises in the country. The lawsuit originated with a seller, Christopher Moehrl, who is a resident Minnesota who listed his home for sale in 2017. The home was listed on the Northstar MLS. He was represented by a REMAX franchisee and the buyer was represented by a Keller Williams franchisee. As part of the transaction, he paid a total broker commission of 6%. The buyer's firm was paid 2.7% of the total commission paid by the seller. He started wondering why he was paying so much money to the buyer's broker because it wasn't evident that the commission matched the work he perceived the buyers broker did.

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

- Realtors/MLS rules require all brokers to make a blanket non-negotiable offer of buyer broker compensation when listing on the MLS.
- The consumers are saddled with a cost that would be borne by the buyer in a competitive market.
- Without the rule, the buyer brokers would be paid by their clients and would compete to be retained by offering a lower commission.

- The Realtors and firms have kept buyer broker commissions in the 2.5 to 3% range for many years despite the diminishing role for buyer brokers.
- Buyer broker costs are similar regardless of the price of the home, yet they are paid based on the price of the home.
- Sellers are forced to pay commissions to buyer brokers, their adversaries, in negotiation to sell their homes, therefore substantially inflating the cost of selling their homes.
- Home sellers have been compelled to set a high buyer broker commission to induce buyer brokers to show their homes.
- Price competition among brokers to be retained by home buyers has been restrained.
- Competition among home buyers has been restrained for the inability to compete by lowering the buyer broker commissions
- Real estate firms have increased their profits by inflated total commissions.

In addition, the lawsuit claims:

- A comparison of commissions paid in other countries with those of the US shows brokers in US are much higher.
- Commission rates have doubled over the years because house prices have risen. Rates are more than double the rate of inflation.
- There is a great conspiracy between the member firms and the MLS/Realtors.
- The buyer brokers are entirely compensated by home sellers.
- The structure of the MLS is such that an alternative MLS would not survive so there is no competition
- Realtors advise MLS to enter into non-compete agreements with third party websites such as Zillow..

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

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

This lawsuit is quite far-reaching touching most of the major franchises and the National Association of REALTORS. It will most likely be in the courts for many years to come. "There are antitrust lawsuits in process against Realogy, Keller Williams, RE/MAX, and Zillow. The Moehrl class-action suit joined with others and continues onward. There was a proposed settlement with NAR but the Dept of Justice withdrew it.

The Department of Justice has opened its own investigation in 2019 into real estate sales apart from the lawsuits. They have demanded information from CoreLogic, which is a platform for most of the MLS's in the country. They are looking into whether or not MLS services prevent competition in the real estate fee structure. The question is whether brokers are engaging in anti-competitive practices. One such practice is that brokers in some areas can filter listings by the commission offered. In some markets, brokers have been trained to only show properties with a certain minimum commission.

It is important to be aware of these issues because most consumers do not understand how brokers are compensated. There are people that are seriously concerned about the future of our business. It is important to know that you cannot discuss what you charge for commission with brokers from other companies as it could be construed as price fixing. The commission you charge a client is negotiated between you, your company, and the consumer.

The agreement to pay commission does not in and of itself create an agency relationship according to the Law of Agency. Again, the payment of commission does NOT create an agency relationship. This is important to understand.

Business Practices and Standards

1. Organizational Structures

a. Working in a Team Environment

Real estate transactions have become more complicated and cross over many areas of expertise. There are many brokers that have chosen to work in a team environment. In some cases, the team can have a strong organizational structure with specific duties by the members who are licensed and unlicensed. There are other teams that are created for specific types of transactions to share expertise or for two or more brokers to work together to provide more customer attention.

The following can be examples of current team organization

- A two people (related or not) working together. Once can be licensed as a broker and the other unlicensed. One or both can be managing brokers.
- A team organized under the name of a "top" agent can include an entire management structure. There can be listing agents, buyer's brokers, and transaction staff. The lead agent can be licensed as a managing broker and be delegated duties to supervise the others within the sub organization. Or the lead agent can hold a broker's license and have no duties to supervise the other brokers within the team.
- A group of agents can work together as a team with or without using a team name. They can work together with clients. They can all be licensed as brokers or there can be one broker with a managing broker's license who is responsible for the team records.

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

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

The Department of Licensing laws and rules do not address or define teams. There is no law that requires a team to be run with a managing broker as the lead.

The Designated broker of a firm can delegate certain responsibilities to managing brokers. Duties of a designated broker cannot be delegated to brokers, but only to those with a managing broker's license. It must be in writing. This is covered in RCW 18.85.275 (3).

Real estate license law requires that all delegations of authority be in writing from designated broker to a managing broker. While designated brokers are able to delegate many duties to a managing broker, the delegation of authority is not complete unless and until it is put into writing, signed by both the designated broker and the managing broker. Oral delegations of authority do not successfully delegate authority and do not hold up under an audit.

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

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

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

b. Licensee Status as an Independent Contractor

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

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

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

c. Broker Personal Safety

"Make good decisions" when working as a real estate broker. It is important to recognize that following safety precautions applies to men and women. There have been men and women that have been attacked, robbed, and murdered.

Follow your instinct or your "gut" ... as some people would say. There are times we all let that alternate voice sway us to take risks as work that are not wise. These can include showing vacant property alone, working with customers that make unwanted advances or show anger, taking time with unqualified prospects, giving away too much personal information.

If you are listening to that voice trying to convince you that you are being too careful... Stop.. think again. You have family and friends that are waiting for you at home. Make good decisions so that you are not used as an example of what "not" to do.

d. New license Renewal Process

The Department of Licensing is going to be accessible only online for renewals and account changes. Goes are the days of walking into the office in Olympia to turn in a renewal. All licensees are required to set up a Secure Access Washington (SAW) account. The information is available at Dol.WA.Gov website.

To renew a real estate license, brokers are to set up a SAW account, check that they have taken the required clockhours, and pay online. It is not required to upload the course information. If audited, brokers will be required to email copies of the actual certificates to the DOL.
Fingerprinting is required every 6 years. The Department of Licensing has a link on their website to IdentoGo to make an appointment.

2. Commercial Real Estate Practices

a. Commercial Property Valuation

Commercial real estate refers to properties used specifically for business or income-generating purposes.
The four main classes of commercial real estate include office space, industrial, multi-family rentals, and retail.
Commercial real estate provides rental income as well as the potential for some capital appreciation for investors.
The properties can be considered in one of the following classes:

Class A represents the best building in terms of design and definition, age, quality of the infrastructure, and location.
Class B buildings are usually older and not as competitive in terms of price. They may be due for remodel or restoration.
Class C buildings are usually over 20 years old, with less desirable location, and in need of updates.

Commercial properties are also evaluated by the zoning and licensing.
Determining value of a commercial property will depend on the type of property, the improvements, and the income.

One of the common methods used to evaluate a commercial property is to compare its capitalization rate (also known as cap rate) to that of similar properties. This is calculated by dividing the property's sale price by the net operating income. You can think of it as what your annual rate of return would be if you'd paid for the property in cash.

But even if a prospective property looks like a good deal by measure of the cap rate, you've got to see how it stacks against a couple of other valuation methods. This can include the following:

- **Net operating income (NOI):** The amount of income the asset brings in, after all operating expenses, including vacancy and loss, and before a mortgage is paid. This is the amount used to factor the property's capitalization rate.
- **Cash flow:** This is the net amount of money in your pocket after all expenses and any mortgages are paid.
- **Cash-on-cash return:** This percentage is figured by dividing the amount of cash you put down on a property by the annual cash flow it produces. It is another measure of your return on investment.
- **Gross income:** The total amount of money a property brings in before expenses.

b. Commercial Leasing

Commercial leases are divided into four types.

A single net lease. The tenant is responsible for paying property taxes.
A double net lease (NN). The tenant is responsible for paying property taxes and insurance.

Triple net lease (NNN). The tenant is responsible for paying property taxes, insurance and maintenance. These expenses are in addition to the rent and the utilities. They typically have lower rents because the tenant assumes the expenses.
Gross Lease. The tenant only pays the rent. The landlord pays for the expenses including taxes, insurance and maintenance.

c. Anatomy of a Commercial Lease

To be enforceable real estate agreements should have basic issues addressed. They include, but are not limited to, the following:

1. Brokerage and representation. There must be clear agency disclosure and clients must receive a copy of the agency law pamphlet. To be enforceable, the payment of commission must be in writing and paid to the firm. The Law of Agency applies to all real estate sales including owner/ buyer and landlord/ tenant relationships.

2. The **parties to the lease**. The legal names and contact information for the landlord/tenant must be on the lease agreement. Full name of the business ... or party responsible for the lease to be enforceable. If not a person, then the organizational structure must be disclosed including whether it is a corporation, partnership, or LLC. Are they located and legal in the state? Does the tenant have assignment or sub lease rights?

3. Describe the premises. Completely identify the property being leased including the address and legal description, square footage, and any necessary distinctions between the rented space and the usable space in the property. Define other issues including common areas and parking. The nature of the business may require adequate ventilation, ingress, and noise/light mitigation.

4. A clause **limiting the sorts of commercial activity** that are allowed to be conducted on the property. The business use should be clearly defined. Signage and ingress/egress and parking could be significant issues that should be addressed.

5. The **term of the tenancy** must be clear. The lease should specify when the tenant is obligated to begin paying rent to the landlord and the occupancy date. It must have the termination. If the commencement or occupancy date must be changed, the terms and remedies must be specified. Detail the right to terminate the tenancy or extensions to lengthen the term. A long lease for ten years, for example, might be desired for certain business like a restaurant. A landlord might pay for more tenant improvements with a longer lease. The lease can include an option to renew the lease with a shorter lease.

6. The **amount of rent** that will be paid and when/how the tenant will make those payments and it must clarify the expenses. The rent typically includes the base rent and a percentage rent based on the business gross sales. Late payments clause should include the terms. A grace period must be specific. Late fees happen but being in default is a serious issue. It gives the landlord rights that could be harmful for the tenant. Issues including tax assessments or utility improvements must be addressed and the responsibility for payment. The type of lease and the responsibility to pay maintenance and utilities must be clear in the lease terms.

7. A **security deposit** that the tenant must pay to the landlord upfront to cover the cost of any future unpaid rent or damages that must be repaired.

8. A clause addressing **remodeling** that may occur in the space. Who will pay for any tenant improvements? How the space will be returned to how it originally was at the termination of the tenancy. Will there be tenant improvements prior to the commencement of the lease? Will the landlord agree to cover improvements before or during the lease term?

9. Clauses describing the **tenant's duty to maintain** the property, pay utilities, and keep the space up to code. The landlord's right to inspect the property. Also, the landlord has the responsibility to honor leases even if the property is sold.

10. A description of the **forms of insurance** the tenant is required to maintain while renting the property. Is the insurance cash value or full replacement cost. Co-Insurance?

11. A lease should include options to **renew or sublet** the property.

12. Are there **environmental issues** must be addressed? Are their pre-existing conditions? What if the tenant causes an environmental hazard? What if the tenant finds an environmental issue.

Other **important clauses**, such as default by tenant for reasons including non-payment of rent, non performance of obligations for maintenance, vacating or abandoning premises, bankruptcy or assignment for creditors. Also, attorney's fees, and guarantors, depending on the specific circumstances of the business and the lease itself should be addressed. Remedies for the landlord breaking a lease by a tenant.

d. Commercial Property Management

Owning and maintaining leased commercial real estate requires full and ongoing property management. Property owners may wish to employ a commercial real estate management firm to help them find, manage, and retain tenants, oversee leases and financing options, and coordinate property upkeep and marketability.

The specialized knowledge of a commercial real estate management company is helpful as the rules and regulations governing such property vary by state, county, municipality, industry, and size.

Often the landlord must strike a balance between maximizing rents and minimizing vacancies and tenant turnover. Turnover can be costly for CRE owners because space must be adapted to meet the specific needs of different tenants—say if a restaurant is moving into a property once occupied by a bank.

e. Professional Cooperation

Professional Cooperation

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

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

One of the biggest complaints from consumers and real estate brokers deals with communication. The broker so often didn't answer the phone and there wasn't a return call is an example.

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

The type of complaints can include:

- The broker did not answer phone calls or does it sporadically
- The assistant to the broker does not know anything about the transaction
- The Broker did not file the paperwork on time.
- The broker will not confirm the earnest money received.
- The broker did not tell the buyer that their offer was presented or not accepted.

3. Risk Avoidance Reminders

a. Commercial Real Estate Transaction Forms

Over 100 commercial brokerages in WA state belong to the Commercial Brokers Association. The broker membership totals over 4600 members throughout the Pacific Northwest including Washington, Oregon and Idaho. The CBA provides the most current contracts and forms accessible online including listings, sales, leases and business sales agreements.

To be valid for the entire period of the lease, if a lease is for a term of more than one year, it must be notarized. If the lease is over a year and not notarized, it will be legally recognized as month-to-month. Subleases and lease assignments for a term of more than one year must also be notarized.

b. Statute of Frauds

According to the Statute of Frauds, all real estate transactions must be in writing. This includes leases, purchase and sale agreements, and listings. Broker compensation must be in writing.

c. Off Market Transactions

Presenting off-market property to multiple buyers. You can only represent one party iso once an offer is made, you cannot present to another buyer until first buyers deal fails.

d. Making referrals

All real estate commissions are paid directly to the firm. They are not paid to the broker or a third party.
It is unlawful to pay any part of a commission in Washington state to an unlicensed person.
In Washington State a broker can pay a referral fee to a third party unlicensed person so long as the payment is not contingent upon receipt of compensation after a successful closing. The fee cannot be tied to a transaction closing.
Any referral payment or gift of any kind cannot be exchanged with a person in the title insurance industry in WA state.
Under the RESPA Federal laws, any payment made in exchange for a referral is prohibited.

e. Limitations on Licensees conduct about referral of title insurance providers

Title insurance companies along with closing agents are a critical part of a real estate transaction. They must work under the Real Estate Settlement and Procedures Act (RESPA) which is a federal law. This regulates almost all aspect of the closing of a transaction from money held in trust to final signatures on documents and disbursements of funds.

In the State of Washington, the Title Insurance companies are regulated under the Washington State Office of the Insurance Commissioner(OIC). The state has passed regulations prohibiting a title company from providing anything of value to real estate brokers or firms as an inducement for referring their clients for business. The reason is due to the high amount of competition with a large number of title insurance companies vying for business throughout the state.

The real estate Department of Licensing also has laws that strictly prohibit a real estate licensee from accepting anything of value from a title insurance company. Most real estate brokers are aware that the title insurance companies are prohibited from such practices, but few brokers realize that the acceptance of any kickback is prohibited under their own real estate license law. The section of the law that deals with this issue is RCW 18.85.053.

A real estate licensee or a person who has a controlling interest in a real estate business shall not, directly or indirectly, give any fee, kickback, payment or other thing of value to any other real estate licensee as an inducement, reward for a referral. Any real estate licensee cannot refer business to a title insurance agent in which the real estate licensee of also has a financial interest.

A licensee cannot solicit or accept anything of value from anyone in a title insurance company that the OIC has prohibited being given to a licensee.

A real estate firm or licensee cannot prevent or deter a title insurance company or their representatives from delivering promotional materials concerning title insurance to real estate licensees. Any material delivered to licensees must:

a) Be business appropriate and not misleading or false
b) Does not malign a licensee
c) Is limited to those areas of the real estate office that is for public access
d) Delivered in an appropriate manner and doesn't threaten the safety or health of anyone in the office.

f. Multi-state Transactions Out of state Licensees

In Washington State real estate license law allows out of state licensees with licenses equivalent may perform commercial brokerage services under certain rules. The broker must work in cooperation with an active Managing Broker in WA. There must be a written agreement with the WA firm and designated broker that includes terms of cooperation, oversight by the WA designated broker, compensation, and a statement that the approved out of state licensee and it's agents will adhere to WA laws. The out of state licensee must furnish a copy of their license to the DOL. All advertising shall have the name of the WA broker, managing broker or firm on all advertising. All documentation related to a transaction is deposited with the WA broker, managing broker or firm for a period of 3 years.

The out of state broker must consent to jurisdiction that legal actions arising out of the conduct of the approved out of state licensee or its agent may be commenced against the approved licensee in the court of proper jurisdiction of any county in WA where the cause of action arises or where the plaintiff resides.

4. Real Estate Advertising

a. License Law Requirements

a. All advertising Must Include Firm Name

All advertising of professional services and any marketing of a client's property, without exception, must include the firm's licensed name. The firm's name must be included, in a clear and conspicuous manner. "Clear and conspicuous" in an advertising statement means the representation or term being used is of such a color, contrast, size, or audibility. This means that the firm name must be presented in a manner so as to be readily noticed and understood. Said differently, a reasonable consumer should be able to identify the firm based only on the advertisement. Licensees advertising their personally owned real property must only disclose that they hold a real estate license.

Industry professionals must clearly indicate the name of their firm, as it appears on the firm's license, in all advertising. It is not sufficient to advertise only the franchise name if the firm's licensed name, includes additional words. For example, firm's licensed name is "Big Franchise/South Sound". All advertisements must include "Big Franchise/South Sound." It would be unlawful to include only "Big Franchise" or "South Sound."• The licensed firm name is the name that appears on the firm's license. If the firm applied and received a DBA (doing business as), the DBA name must be clearly and conspicuously identified in all forms of advertising.

• The firm name cannot be abbreviated or include abbreviations in advertisements if those abbreviations are not commonly understood. For example, if the name of the brokerage contains the words "Real Estate," industry professionals cannot use "R.E" as an abbreviation. If the name includes "Realty," use of "Rlty" is not appropriate. Commonly understood abbreviations, such as "Inc." or "Corp." may be used. If the firm license has the abbreviations, then those abbreviations can be used.

• Including a firm logo or website address does not qualify as including the firm's licensed name.

b. Assumed Names

Firms may obtain, from DOL, an assumed name license. The assumed name license may be the firm's DBA or it may be the name of a team of broker's licensed to the firm. There is no limit on the number of assumed name licenses a firm may obtain. The assumed name license is owned by the firm. The obligation to include the firm's licensed name, on all advertising, is satisfied by use of any assumed name duly licensed to the firm.

DOL may deny, suspend, or reject an assumed name license application that, in DOL's opinion, is derogatory, similar to another licensed firm name, implies that the firm is a government agency, or that the firm is a non-profit or research organization. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

An industry professional may use the assumed name in advertising, or use both the complete firmname and assumed name as licensed. It is unlawful, however, to use only part of either the firm name or the assumed name. For example, the firm's originally licensed name is "Big Franchise/South Sound." The firm's assumed name license is "Team Terrific." Advertising can include either licensed name without the other, but advertising could not include, for example, "Big Franchise/Team Terrific".

c. Internet Advertising

All Internet related advertising that consumers can view or experience, as a separate unit, (for example, email messages or web pages) require disclosure of the firm's name as licensed and disclosure of the broker's or managing broker's name, as licensed.

Real Estate licensees are also subjected to media, such as YouTube videos that may encourage licensees to generate leads without identifying the firm name. Failing to include the firm name would be an advertising violation.

Real estate advertising can't be false, deceptive, or misleading. A real estate licensee who uses an "unbranded" or misleading website not only subjects their license to disciplinary action, but also the licenses of their delegated managing broker, designated broker, and even the firm.

We're occasionally asked, "Are URL's advertising? The website URL is an internet address and we don't consider it advertising. However, once the website opens up, the firm name or assumed name must be clear and conspicuous.

Before employing or using a website, we highly recommend you have your delegated managing broker or designated broker review and approve it.

For details about using advertising on the internet and social media see, Washington State Real Estate Advertising Guidelines.

Photos

When using photos in advertising it is important to have the permission of the owner of the photo. Picking up a photo of a past listing, just accepting a photo from a seller, or editing a photo to add or eliminate a feature would be false and misleading advertising.

d. How to Deal with Contaminated Sites

When a broker has a buyer or seller with a property that has any indication that it may have contamination, it is imperative that the broker insist on a Phase 1 Environmental Site Assessment. This includes purchases and business transactions for everything from land, business or building purchase or a lease. It includes industrial, commercial and residential purchases. It is often recommended and required by lenders.

The property could have been the location of a business that could have had an environmental impact on the land. The land or building being evaluated might have been the site of hazardous substances or be located adjacent to a property that is affected. A Phase 1 assessment is to identify any existing or past release of a hazardous substance into structure on the property or into the ground, ground water, or surface water of the property. It includes a site visit to observe current and past conditions and uses of the property and adjacent properties. There may be interviews with present and past property owners, operators, and occupants. A review of government databases and historical records to identify known or suspected hazardous issues. The average cost of a Phase 1 Environmental Site Assessment is usually between $1500 to $6000 depending on the type, age, and size of the property

e. How to property market non exclusive listings

Most real estate commercial and residential listings are marketed on a database such as the MLS and the CBA. These organizations in WA state are primarily member owned and have membership rules which include listing property with an exclusive listing agreement. Real estate brokers who are not working under those rules and have non-exclusive listings should consult their designated broker for advice on marketing them.

f. Buyer and Tenant Agency Agreements

Buyer/Tenant agency agreements are more important than ever in today's market. Disclosure and commission need to be agreed upon when initially providing brokerage services. Agency agreements cover representation including dual agency and have verbiage that disclose that the buyer/tenant has received the Law of Agency pamphlet. In addition, the agreements cover compensation owed to the broker if not paid according to a listing agreement. Any agreement for commission must be in writing to be enforceable in WA state.

Quiz for Core Curriculum 2022-2023

Complete answers on this form. Scan to Professional Direction with Evaluation

1. 1031 exchanges defer taxes when like kind properties are exchanged. . True / False

2. Qualified Opportunity Zones were created to encourage economic growth. True / False

3. Investment in Qualified Opportunity Zones includes tax benefits. True / False

4. Cannabis businesses cannot typically use federally insured banks for deposits. True / False

5. The Growth Management Act was revised to assure adequacy of buildable lands. True / False

6. Every real estate purchase transaction in WA must contribute a $40 surcharge to fund homeless. True / False

7. Washington Urban Density Act to allow local options for higher density. True / False

8. Residential seller disclosures now require oil tanks and farms/forestry. True / False

9. The Washington Right to Farm Act protects farm and forest land from nuisance lawsuits. True / False

10. A landlord in WA must offer a rent payment plan for new tenants at first move in. True / False

11. A landlord cannot take adverse action against a tenant applicant who had covid. True / False

12. Landlords will now have a difficult time evicting tenants. True / False

13. There are 16 reasons a landlord can evict a tenant. True / False

14. The Eviction Resolution Program applies to all counties in WA and matches landlord and tenants to specialists. True / False

15. There is a landlord mitigation program in WA for landlords suffering losses from unpaid rent. True / False

16. A buyer or seller renting for one or more days even with an agreement, who refuses to vacate, will fall under the Just Cause Act. True / False

17. Dual agency must be in writing. True / False

18. A pamphlet on the Law of Agency must be provided to all parties. True / False

19. All firms must have complete transactions loge including contracts and correspondence. True / False

20. A broker is responsible for keeping copies of all documentation on every transaction for auditors. True / False

21. If a sale fails to close or an offer is not accepted, the firm must retain copies in the transaction file. True / False

22. A New brokers must have transactions reviewed by the designated broker or a managing broker who has been delegated. True / False

23. The Douglas V Visser case made it clear that buyers must beware, inspect and question. True / False

24. The Beauregards case focused on a disgruntled seller when the house didn't sell because it was overpriced for the market. True / False

25. A broker must convey all correspondence to the client once the broker is rendering brokerage services. True / False

26. Real estate brokerage services means any of the services offered directly or indirectly for the promise of compensation. True / False

27. Brokers are held up to the standard of care of an attorney when drafting provisions not in the standard real estate form. True / False

28. The Department of Justice is investigating the payment of commissions to real estate brokers and anti-trust possibilities. True / False

29. Though "teams" are not defined in license law as an entity, they are bound by the laws. True / False

30. Brokers must renew their real estate license by opening a Secure Access Account in WA state. True / False

31. A triple net lease includes the property taxes, utilities and the maintenance of a property. True/ False

32. The parties that sign on a commercial lease must be responsible for the payments in order for it to be effective. True / False

33. When an owner sells a property with tenants, the new landlord is responsible to honor the leases. True / False

34. According to the Statute of Frauds, all real estate contracts must be in writing. rue / False

35. It is unlawful for a firm to pay out any portion of a commission to an unlicensed person. True / False

36. If the listing broker can hold presentation of offers especially if he/she will be writing an offer with their buyer. True / False

38. An out of state real estate broker can work in WA state as long as they are working in cooperation with a WA state firm. True / False

39. A firm logo on advertising is not adequate disclosure of the firm according to the state advertising guidelines. True / False

40. The firm name must be clear and conspicuous on all real estate advertising. True / False

41. All internet advertising of properties or the broker must have the firm name within "One Click." True / False

42. If a property has any indication of environmental contamination, the broker should suggest a Phone 1 Environmental study. True / False

43. The seller can evaluate multiple offers on the price, buyer's ability and time to close and the lender letter. True / False

44. The real estate broker is not a lender, so evaluating the buyer's qualification is only limited to the lender letter. True / False

45. The seller should choose the offer based on the "paper" not the "people." True / False

46. A counter offer is basically a new offer. The buyer can walk without signing it. True / False

47. The seller can reject all offers in a multiple offer situation. . True / False

48. It is best practice to use the MLS forms when negotiating offers to avoid the unauthorized practice of law. True / False

49. All offers must be presented to the seller regardless of whether the broker deems the offer acceptable. True / False

50. A broker is responsible for keeping up to date communication to their clients in a real estate transaction. True / False

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

Mandatory Registration and Evaluation

Did you read the material in the booklet on this date? YES / NO
Did you complete the quiz and attach answer sheet? YES / NO
Did you pay tuition using secure payment option on the website. Pay pal processes credit cards. YES / NO
Did you fill out and sign this form? YES / NO

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

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

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

Current Issues Commercial Core Curriculum 2022-2023		
Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
	Email	
License Renewal Date	Date Class taken	Notes

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

Professional Direction, email: clockhours@gmail.com
www.clockhours.com