



Core Curriculum

Residential Focus

2022-2023

By Natalie Danielson

Required Current Issues course for all Washington State Licensees

PROFESSIONAL *Direction*

email: clockhours@gmail.com

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Please Read this First! Thanks!



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

PROFESSIONAL Direction
Email: clockhours@gmail.com

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Curriculum

Session Hours	Major Topics	Objective
1 30 min	Legislative and Legal	A. Fair Housing Protected Classes B. Landlord Tenant Law update C. Rent-backs fall under new Just Cause Law D. Seller sues broker for failure to sell overpriced listing
2 60 min	Forms	A. Escalation Clauses B. Evidence of Funds C. Inspection Addendum D. Inspection Response E. Closing and Possession Terms F. Financing contingency forms
3 90 min	Business Practices Professional Standards	A. Professional Cooperation B. Broker responsibilities when in management position C. Timely presentation of all offers D. Multiple Offer Situations E. Risky Practices in an abundant market

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The Core Curriculum is a required course for every real estate broker renewal every two years. The curriculum is decided 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. This is the residential focus that includes forms, current case, handling offers, and responsibilities as a managing broker. 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:

- Know the changes to Landlord Tenant Laws in Washington state and the impact on rent-backs or pre closing possession.
- Learn about the Beauregard Case regarding an overpriced listing and the responsibility for presenting written information to clients.
- Know how to effectively utilize specific forms for escalation clauses, financing, closing, and inspections.
- Identify issues to contribute to professional cooperation with clients and fellow brokers.
- Identify broker responsibilities when in management position
- Know the requirement for timely presentation of offers.
- Know the way to handle multiple offers effectively.
- Identify risky practices in an abundant market

Legislative and Legal Updates

A. Protected classes under Anti-Discrimination Laws

What is Fair Housing

Fair housing is the right to choose housing free from unlawful discrimination. Fair housing laws protect people from discrimination based on race, color, religion, sex, national origin, familial status, disability. *In 2021, President Biden signed an executive order to add LGBTQ+ to the definition of protected class under sex.*

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

What is a protected class?

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

Are you a member of a protected class?

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

What are the protected classes under the Federal Fair Housing Laws?

The Federal Fair Housing Law lists the following protected classes:

Race, color, religion, national origin, sex (including pregnancy, childbirth, and related medical conditions), familial status (having children under 18 in a household including pregnant women), and handicap/disability.

What are the protected classes under the Washington State Anti-Discrimination laws?

Race, color, religion, national origin, sex, Sexual Orientation/Gender identity, Veteran/military status, Disability, Marital Status, and Familial status (families with children under the age of 18 or pregnant)

Washington State Human Rights Commission WSHRC

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

These are some of the issues/cases and examples from The Fair Housing Coach regarding the protected classes under Fair Housing Law.

Race /Color in Housing

It is illegal to discriminate on the basis of race or color. *Hair and other historically racial traits are now protected in WA. This can include prohibiting any discrimination against a person's hair or other trait that is aligned with their background.*

Creed/Religion in Housing

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

National Origin

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

Sexual Orientation and Gender Identity in Housing

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

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

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

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

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

Executive Director William D. Hoshijo said in a statement, "The award of punitive damages in the Commission's Final Decision and Order should signal to housing providers that harassment, intimidation, and discrimination against individuals for expressing their gender identity will not be tolerated." March 2019 The Fair Housing Coach

Sexual Harassment in Housing

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

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

Anna María Farías, HUD's Assistant Secretary for Fair Housing and Equal Opportunity said, "HUD will continue working in partnership with the Justice Department to address this form of discrimination." September 2019

Familial Status

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

The case came to HUD's attention when the mother of two minor children filed complaints alleging that the landlord had a policy limiting the number of children that could reside in their apartments. HUD's charge alleges that the landlord's voicemail announced the policy to people who phoned looking for housing. The policy allows only one child in a two-bedroom unit and two children in a three-bedroom unit. The charge will be heard by a U.S. Administrative Law Judge unless any party elects for the case to be heard in federal court.

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

A mother living at a housing community filed a complaint alleging that the property manager made her son and other children leave a recreational area of the complex after observing the children playing without their parents observing. The woman's complaint also alleged that the community maintained an unwritten policy that children couldn't use common spaces without adult supervision. The owner and manager denied that they discriminated against the woman but agreed to settle the complaint. Under the agreement, the community agreed to pay \$5,000 to the mother and to allow her to terminate her lease without penalty if she chose to do so. The community also agreed to provide fair housing training for its employees and circulate a letter to residents stating that children do not need to be supervised to use the development's common areas.

Individuals renting units at apartment complexes have a right to use any amenities that are available, and this applies to families who have children. August 2019

Honorably Discharged Veteran and Military status in housing

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

Handicap/ Disability

A housing provider including landlords, property managers, homeowners, and condominium associations cannot discriminate against persons with disabilities and must make reasonable accommodations. Obesity was added to the list for handicap/disability.

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

- Refuse to allow reasonable modifications to a dwelling or common area, at your expense, if necessary, for the person with the disability to use the housing. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification.
- Refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. This can include service and comfort animals, parking, access, etc.

A reasonable accommodation could include an assistance animal. The law does not have a training requirement for such animals. In order for a person to have an assistance animal, the person must have a disability, request the animal as a reasonable accommodation, and must be able to show that the animal is necessary because of the person's disability by presenting a note from a medical provider.

Emotional support animals and comfort animals would be included. Fair housing does not limit the species of service animals.

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

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

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

November 2019

The Fair Housing Coach

Hate and Bias crimes in Housing

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

Substance Use Disorder

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

Implicit Bias affecting Discrimination

Implicit bias is an unconscious association, belief or attitude toward others in a social group which can result in stereotyping others like them. Even without knowing it, everyone has their own implicit biases that are a result of learned association and social conditioning. These biases affect decisions that people make about others that can be negative or positive. Most people don't realize that they exist but by being more aware of decisions made in your real estate business.

A simple example is that you might have grown up in a family or community that thought people that were green or that had purple hair or that had an accent were not as Pick one... (smart, successful, trustworthy, etc.) You might not even realize it when you were sitting in front of a client that a bias for or against a social class of people is affecting your decisions. It is not just a racial bias, but it can include other unconscious assumptions that we make about other people. In one study quoted in Psychology today in June 23, 2017, found that 75% of men associate "male and work" and female & family" more quickly than the opposite pairings. The same associations were marked by 80% of the women in the study.

The way we were raised, what we watch in the media, the people that we socialize with, and our own experiences affect our own biases. We tend to seek out patterns. It is one way that we sort out information in our complicated world.

A stereotype, is a belief that a certain attribute is a characteristic of members of a particular group. They are acquired effortlessly, and we are more likely to rely on them when cognitive load is high. We just take a shortcut to process all the information. Our brain is busy because we are distracted, tired, or in a hurry, so our brain gives us the answer quickly from the stereotypes we have adopted.

Examples of implicit bias are all around us in our daily workplace and social interactions. Discrepancies between men and women regularly impact relationships that lead to decisions at work. Studies have shown that men interrupt women three times more often than men interrupt other men. In general, women are guilty of interrupting other women more than they interrupt men, according to an article in the Washington Post February 2021. They also state that "a growing body of evidence reveals that when women (and racial minorities) advocate for diversity, they tend to get penalized for being self-serving and nepotistic. When (white) men make the same case, they are more likely to get heard."

In an investigative report by Newsday, November 2019, discovered that Black home buyers were being discriminated against. Real estate agents were providing an average of 50 percent more listings than they gave to black counterparts. 39 compared with 26.

In Washington state, as in other places in the country, systemic racism and biases can make it more difficult for people to become homeowners. Real estate agents need to be aware of their own implicit biases and stereotyping that is affecting their relationships with customers. The National Association of Realtors does have a free video on Implicit Bias on the website.

Introductory Letters ("Love Letters")

A poem, photo collage or a love letter can be included with a real estate offer from a buyer trying to "promote" his or her offer to the sellers. As the real estate market continues to heat up, buyers may be competing with other offers that may be higher. Writing a personal letter to appeal to the seller emotionally to accept the buyers offer is becoming more common. The love letter is an attempt to entice the seller into accepting an offer based on

factors that may have nothing to do with the purchase and sale agreement. There are articles all over the internet, samples of letters, and even templates encouraging and instructing buyers to write letters.

Though it may appear innocent enough, the love letters can encourage a seller to discriminate when choosing a buyer for their home. The seller and the real estate agents must not violate Federal, State and local anti-discrimination laws. Homeowners selling their home cannot choose one buyer over another based on a protected class. Protected classes are NOT “minorities.” EVERY person falls under protected classes.

The love letters that are on websites from national news to Realtors most often describe the buyers as a “married couple with children.” Familial status is a protected class in the Federal Fair Housing Act. Familial Status and Marital Status are protected in almost every State and Local anti-discrimination law. If a single woman, a gay couple with no kids, a single man, or a senior are bypassed because the seller goes with emotion and chooses the “little family,” the other buyers have just as much right to purchase the property.

Take it one step further. Many times, the letters include photos of the “little family” and their pooch. The sellers could be encouraged to discriminate based on race, color, national origin or religion based on the photo.

Are the letters discriminatory? Consider how often a real estate agent would encourage buyers that originate from another country, are disabled, have misunderstood religious beliefs, is LBGT? Everyone, regardless of their background, beliefs, health/disability, has the right to purchase a home in the area chosen. When a seller chooses one buyer over another using any information that could be construed as discrimination, the buyers that lost the property have the right to file a case of discrimination.

Do the sellers have the “right” to sell their house to whomever they choose? When you buy real estate, you get a bundle of rights and a huge bag of restrictions. You may be restricted from painting your house purple, having bedrooms with no windows, practicing your drums in the backyard after midnight, adding a third floor, and more. There are federal, state and local laws that include zoning, fire codes, building codes, homeowners associations and city noise ordinances. The seller does NOT have the right to discrimination in the sale of the house. The seller is not the one to determine if there is a discrimination issue in play, either.

Let’s say the seller and the real estate broker sit at the dining room table reading the “love letters” and they choose the buyers based on, for example, the fact that they are married with children. They assume that no one will find out. It is still a federal crime. If a buyer files a discrimination lawsuit against the seller and the real estate agent, the fines can start at \$10,000 and the real estate agent and the seller would be required to tell the truth under oath. Real estate agents are bound by federal state and local discrimination laws and cannot discriminate. The real estate agent is also bound under License Law to not discriminate and could be subject to disciplinary action. Saying a victim is “wrong” and there was no discrimination can’t be your only defense!

If you speed down the road thinking you won’t be caught, you still are violating a law. Unknown to you there might be radar, a curve you missed or a pedestrian that took a picture of your license plate. You are still violating a law whether you get caught or not.

The seller of the property is best to “*Choose the Paper... not the People*” when signing a purchase and sale agreement. Choose the offer on the property based on the terms of the contract and not the family, color, race, age, orientation, etc of the buyers. Do not open up the door to a discrimination complaint. Washington Realtors are considering proposing a law to stop the love letters.

B. State 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 must 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 consideration of 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 increases to base rent and other reoccurring fees not 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% of 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 in Eviction, and landlord 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. Inquiring about or requiring disclosure of a prospective tenant's medical records unless necessary to evaluate a reasonable accommodation.

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... It is difficult to follow. If a client gets into this situation, make sure that 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 [59.18.650](#) 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 range 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.

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

C. “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 the rent must be negotiated in a repayment plan?

Your agency relationship, most likely, terminated at the time of closing. You need to be careful practicing law by advising clients either to offer a rent-back or on how to deal with a tenant that will not vacate. Also, the buyer becomes a landlord if the seller retains possession or the seller becomes the landlord if the buyer moves in prior to closing.

As the eviction moratoriums are going away as the pandemic wanes, the laws are becoming very strict to protect the tenants from becoming homeless. The new Just Cause law can be found at: [RCW 59.18.650](#) Eviction of tenant, refusal to continue tenancy, end of periodic tenancy—Cause—Notice—Penalties.

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.

D. Seller Sues Broker for Failure to Sell Overpriced Listing

Brokers obligation to convey offer to client is limited

This is an important case for many reasons. First of all, the sellers sued their listing broker because the property didn't sell when it was clearly overpriced. They claimed they were damaged by decisions that the listing agent made which are typical of most listings. But, the final decision regarding the presentation of all written communication as specified in the Law of Agency was tested and better defined.

The **Beauregard's** retained a real estate broker to list and sell their property in Bellevue, Washington. During the initial meeting with the Beauregard's at their home, the Beauregard's mentioned they were also considering another real estate broker. Ultimately the Beauregard's chose the broker because he/she estimated the property could be listed at \$ 2,488,000, higher than the other agent's estimate. The broker 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 Beauregard's insisted on her opinion. The Beauregard's maintain that the broker inflated the price to induce them to enter the Exclusive Sale and Listing Agreement (the Listing Agreement).

Ms. Beauregard told their broker that, if they did not get offers within their desired price range, they were also interested in renting their property. Their broker concedes this alternative was discussed, but the Listing Agreement contracts Broker 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." Broker also listed the property as owner-occupied despite it being vacant because for "premier properties," Broker 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, Broker maintains that the property was not truly vacant because some of the Beauregard's' furniture was present, and a vacant property is more susceptible to theft. The Beauregard's maintain that Broker never fully explained to them that the property was listed as owner-occupied or as viewable by appointment, and had they known, the Beauregard's would have never agreed to those terms. Those terms, however, were clearly listed in the Listing Agreement signed by the Beauregard's. On December 4, 2015, (more than two weeks after signing a listing agreement) Broker e-mailed the Beauregard's, 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. Broker 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, Broker suggested a lower list price to compensate for the market trends. The Beauregard's disagreed with Broker'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 Beauregard's maintain they contacted Broker about delisting the property over the holiday season, but Broker never responded because he/she was vacationing in France. Broker 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, Broker's office hosted at least 18 open houses at the property. No prospective buyers submitted offers during that period. The Beauregard's contend that the lack of offers was because Broker failed to follow-up with prospective buyers and used old photographs in the listing. At several points during her representation, Broker recommended that the Beauregard's drop the list price because other nearby properties had recently lowered their prices and attracted buyers. On February 3, 2016, the Beauregard's agreed to reduce the price to \$ 2,173,000, stating "[w]e had always felt the \$2.280,000 was ambitious, but wanted to try it." Broker recommended a further price reduction on March 20, 2016, to \$ 1,998,000, but the Beauregard's disagreed. On March 6, 2016, the Beauregard's notified Broker they wanted to switch real estate agents because they felt Broker was not following up with prospective buyers and had too many other listings in the Bellevue area. Broker asked the Beauregard's to continue the listing. Broker and the Beauregard's 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 Beauregard's terminated their Listing Agreement with Broker in April 2016, and entered a new agreement with another broker. The property sold on August 17, 2016 for \$ 1,850,000.

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

During discovery, the Beauregard's recovered an e-mail inquiry from another broker on April 6, 2016. This email inquired whether the Beauregard's would be interested in renting as opposed to selling because he/she had a client looking to move in mid-June from San Francisco, and rent a 2000+ sq/ft house for \$ 3,500 a month. Broker replied that the Beauregard's 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 Beauregard's contend that Broker 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 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 years."

The Beauregard's argue that Broker breached his/ 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 he/she should be contacted prior to any viewings, (5) recommending that the Beauregard's list their home over the dormant holiday season, (6) failing to respond to the Beauregard's 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 Beauregard's of the April 6, 2016 offer to rent their home for a 2-years [sic] lump sum cash payment, and (10) elevating his/her own financial incentives over and above the Beauregard's 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." See [RCW 18.86.030\(1\)\(c\)](#). As discussed above, 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."

The e-mail specifically asked if the Beauregard's 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 Beauregard's contracted with Broker because the email clearly indicated that the interested party only wanted to rent the property. Since Broker's scope of agency was limited to selling the property, Broker was not expecting compensation from renting the property. Therefore, Broker did not have a duty to communicate the rental inquiry.

Specific Form Use

The NWMLS forms were changed in 2019 when the Core Class curriculum was written. Again in March 2021 there were additional forms changes that are briefly discussed here.

Listing Forms in NWMLS

There was a bulletin published in the spring of 2022 regarding upcoming changes to listing agreements in the NWMLS. Review that bulletin!

A. Escalation Clauses

What is an escalation clause and when is it utilized?

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

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

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

What are the disadvantages of using an escalation clause?

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

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

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

The competing offer may not actually be a “competing offer” under the definition on the forms. It may have expired or the buyer verbally made changes. The property might be in demand by two or more buyers. The agreed upon sales price may not appraise which could cause issues for the buyer to qualify. This needs to be addressed in the offer.

Purchase Price (revisions to paragraph)

If a Seller receives a Competing Offer for the Property prior to accepting this offer, with a Net Price equal to or greater than the Net Price of this offer, then the Net Price of this offer shall be increased to \$ _____ more than the Net Price of the Competing Offer. In no event, however, shall the new Purchase Price of this offer exceed \$ _____

The term “Net Price” means the stated Purchase Price (or the maximum price if the Competing Offer contains a price escalation clause) including any price adjustments such as credits to Buyer for closing costs or credits to seller.

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

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

What are the buyer and seller options?

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

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

The listing broker can contact the buyer brokers and request their best offer. The listing broker does not have to disclose what the other buyers are offering. Maybe the listing broker says there is a high offer with a certain cap but doesn't disclose that there are much needed repairs requested and buyers closing costs to pay. Without the competing offer, the second offer doesn't know. The buyer should be counseled to make their best offer and be careful trying to guess about the other offer.

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

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

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

NOTE: the worksheet has been changed. Read it carefully.

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

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

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

What is the definition of “competing offer?”

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

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

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

Seller's acceptance (new paragraph requires competing offer.)

Competing Offer Required for Escalation

"Seller's escalation of this offer shall not be effective unless it is accompanied by a complete copy of any Competing Offer used to escalate the purchase price, including any escalation provision. Purchase Price, including any escalation provision. If Seller fails to provide an offer to be used as a Competing Offer to Buyer at the time of mutual acceptance, then Buyer shall be entitled to purchase the Property at the non-escalated Purchase Price."

Notice to Seller Competing offer (These are new paragraphs in the revisions)

Notice to Seller Competing Offer (entire paragraph added)

If the offer provided by Seller does not qualify as a Competing Offer under Paragraph 2 of this Addendum, Buyer shall deliver notice to Seller of that fact within _____ days (3 days if not filled in) of mutual acceptance. If Buyer fails to timely give such notice, the offer shall conclusively be deemed to qualify as a Competing Offer under Paragraph 2 of this Addendum.

If Buyer provides such notice to Seller, Seller shall have _____ days (2 days if not filled in) to give notice of termination of this Agreement. If Seller timely gives such notice, the Earnest Money shall be refunded to Buyer. If Seller does not timely give such notice of termination, then Buyer shall be entitled to purchase the Property at the non-escalated Purchase Price.

The parties shall use the "Escalation Addendum Notice" (Form 35EN) for notices required by this section.

Three new sections were added on the new revisions.

Notice to Seller- New Purchase Price (These are new paragraphs)

If the new Purchase Price calculated by Seller is incorrect, Buyer shall deliver notice to Seller of that fact within _____ days (3 days if not filled in) of mutual acceptance. Buyer's notice shall include Buyer's calculation of the new Purchase Price. If Buyer fails to timely give such notice, the new Purchase Price stated above shall conclusively be deemed to be correct.

If Buyer provides such notice to Seller, Seller shall have _____ days (2 days if not filled in) to give notice of termination of this Agreement. If Seller timely provides such notice, the Earnest Money shall be refunded to Buyer. If Seller does not timely give notice of termination, then Buyer's calculated new Purchase Price in Buyer's notice shall conclusively be deemed to be correct.

The parties shall use "Escalation Addendum Notice" (Form 35EN) for notices required by this section.

B. Evidence of Funds

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

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

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

C. Inspection Addendum Form 35

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

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

Inspection Contingency. (New added sentence)

The revisions added “Buyer may engage specialists (plumbers, electricians, roofers, etc.) to conduct further inspections of the property.”

Inspection Report. The Buyer shall not provide the inspection report, or portions of it, to Seller, unless Seller requests otherwise or as required by Paragraph 5.

Paragraph 5 Waiver of Contingency by Buyer. (Added paragraph)

If Buyer provides any portion of the inspection report to Seller without Seller’s prior written consent or as required by Paragraph 5, the inspection contingency shall conclusively be deemed waived.

Seller Consent.

The selection of either checkbox below by Seller shall not be considered a counteroffer. Seller requests that Buyer provide the inspection report to Seller.

If Buyer requests repairs or modifications to the Agreement, Seller requests that Buyer provide to Seller only the portions of the inspection report related to the requested repairs or modifications to the Agreement.

D. Inspection Response Form 35R

Know the changes and new language on the inspection contracts

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

Do not give the inspection report to seller without permission. Revision to Form 35 Inspection Response. (new sentence)

New revision adds, “If buyer provides any portion of the inspection report to Seller without Seller’s prior written consent or as required by Paragraph 5 of Form 35, the Inspection Contingency shall conclusively be deemed Waived.”

What if seller requests it?

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

Inspection report identifies problems.

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

What if there is wrongful deliver of the inspection report?

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

What is the remedy for that breach?

“If Buyer provides any portion of the inspection report to Seller without Seller’s prior written consent or as required by Paragraph 5, the inspection contingency shall conclusively be deemed waived.” as per the new revisions on Form 35.

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

The benefit of the Form for the Brokers

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

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

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

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

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

How does it get done in the time frames identified?

On the form, the buyer can't bring a contractor into the house without the seller's permission during the original inspection period.

The **additional** inspection period of 5 days allows buyer to bring specialists into the seller's home based on inspector recommendation.

How to provide for additional time?

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

E. Closing and Possession Terms

What is the definition of "closing?"

According to the state purchase and sale agreement form, "closing" means the date on which all documents are RECORDED **and** the sale proceeds are AVAILABLE to the seller. Any period of time measured in days on the purchase and sale agreement shall start on the day following the event and shall expire at 9:00 pm of the last calendar day of the specified period of time.

Computing Time Backwards (New paragraph)

According to the revisions to the Purchase and Sale agreement the computation of time is specified when counting backwards from the Closing Date.

COMPUTATION OF TIME. Counting backwards from closing sentence added. When counting backwards from Closing, any period of time measured in days shall start on the day prior to Closing and if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day, moving forward, that is not a Saturday, Sunday or legal holiday (i.e. Monday or Tuesday).

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

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

F. Financing Addendum Form 22A

Loan Application.

The sentence was added about waiver of financing contingency. "If not waived, the Financing Contingency shall survive the Closing Date."

Also added... "Buyer authorizes Listing Broker and Seller to inquire about the status of Buyer's loan approval with lender any time prior to Closing. Buyer will execute an authorization form, if required by lender, to accomplish the same."

Financing contingency section changed. Select only A or B Now it states.

A. Seller's Notice to Perform

At any time ____ days (21 days if not filled in) after mutual acceptance, Seller may give 'Notice to Perform' requesting that buyer waive the Financing Contingency and that seller may give notice to terminate the agreement at any time 3 days after deliver of that notice. If buyer does not earlier waive the Financing Contingency. NWMLS Form 22AR shall be used for this notice.

Notice of Termination. If buyer has not previously waived the Financing Contingency, Seller may give 'Notice of Termination' of this Agreement any time 3 days after delivery of Notice to Perform. If Seller gives the Notice of Termination before buyer has waived the Financing Contingency, this Agreement is terminated and the Earnest Money shall be refunded to buyer. NWMLS Form 22AR shall be used for this notice.

B. Automatic Waiver of Financing Contingency (added this paragraph)

Waiver

The Financing Contingency shall conclusively be deemed waived unless within ____ days (21 days if not filled in) after mutual acceptance, Buyer gives notice of termination of this Agreement. If Buyer gives timely notice of termination, the Earnest Money shall be refunded to Buyer after Buyer delivers written confirmation from Buyer's lender as required by Paragraph 4.

Appraisal Less Than Sales Price.

Buyer's waiver of the Financing Contingency under this Paragraph 2(b) will; or will not (will not, if not filled in) constitute waiver of Paragraph 5 (Appraisal Less Than Sales Price).

VA Amendatory Clause (added)

"If the Buyer is obtaining VA financing, it is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs."

Increased Down Payment for Low Appraisal Form 22AD was rewritten.

The increased Down Payment for Low Appraisal Addendum "Supersedes the "Appraisal Less than the Sale Price' provision in the Financing Addendum as follows:

Appraisal Addendum (Form 22AA)

This Increased Down Payment for Low Appraisal addendum modifies the Appraisal Addendum (Form 22AA) as follows:

- Disclosure of Contingent Funds.

Buyer is relying on a loan or loans (the "Loan(s)") to purchase the Property, but this Agreement is not contingent on Buyer obtaining the Loan(s). Buyer shall pay θ \$ _____; or θ _____ % of the Purchase price down, in addition to the Loan(s). a.b.

- Additional Down Payment.

If Buyer's appraised value of the Property is less than the Purchase Price" provision in the Financing Addendum (Form 22A)., Buyer shall pay additional funds up to \$ ("Buyer's Additional Funds") towards Buyer's down payment to close the sale. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Addendum. Buyer may not terminate the Agreement if (a) Buyer's appraised value and (b) Buyer's Additional Funds are equal to or greater than the Purchase Price.

- Buyer's Notice to Seller.

If Buyer becomes aware that the sum of (a) Buyer's appraised value and (b) Buyer's Additional Funds is less than the Purchase Price, Buyer shall deliver written notice to Seller of that fact, including a copy of the appraisal, within days (3 days if not filled in).

- Seller's Right to Reduce Price or Terminate.

If Seller receives the above notice from Buyer, Seller may deliver notice to Buyer within days (3 days if not filled in): (a) reducing the Purchase Price to an amount equal to the appraised value plus Buyer's Additional Funds, or (b) terminating the Agreement, in which case the Earnest Money shall be refunded to Buyer. If Buyer waives the appraisal contingency in the Appraisal Addendum (Form 22AA), Buyer shall be obligated to purchase the Property for the Purchase Price and Seller shall not have the right to terminate the Agreement under this Paragraph 2(d).

Financing Contingency Notice Form 22AR

Seller's Notice to Perform (prior form said "seller's right to terminate")

Seller requests that Buyer waive the Financing Contingency as provided in Paragraph 2(a) of Form 22A. If Buyer does not earlier waive the Financing Contingency, Seller may terminate this Agreement any time 3 days after delivery of this notice.

Seller's Notice of Termination

Seller provided the above Notice to Perform to Buyer at least 3 days prior to the delivery of this notice. Buyer has not previously waived the Financing Contingency and therefore, Seller gives notice that Seller elects to terminate this Agreement. Seller instructs the party holding the Earnest Money to disburse the Earnest Money to Buyer.

Business Practices

Professional Standards

A. Professional Cooperation

Every two years when the core curriculum is updated, this paragraph is included. The broker on the other side of your transaction may appear to be less competent. Remember, that broker may be of the same opinion as you.

When working with another broker on the opposite side of the transaction or when the broker has referred you, it is important to give them a shout out.

One of the biggest complaints in the real estate industry is that the conduct and professionalism of the broker on the other side of the transaction. To keep a transaction moving smoothly toward closing, it is important to keep open lines of communication and respond in a timely manner. All commission issues need to be in writing.

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

When involved in a transaction, real estate brokers need to have good communication skills. There is no real estate class, designated broker lecture, or motivational seminar that can transform an 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.

B. Broker Responsibilities when in Management

The Designated broker of a firm can delegate certain responsibilities to managing brokers. Duties of a designated broker cannot be delegated to brokers, but only to those with a managing broker's license. Real estate license law requires that all delegations of authority be in writing from designated broker to a managing broker. While designated brokers are able to delegate many duties to a managing broker, the delegation of authority is not complete unless and until it is put into writing, signed by both the designated broker and the managing broker. Oral delegations of authority do not successfully delegate authority and do not hold up under an audit.

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

The delegation of authority is NOT a delegation of responsibility. When a designated broker delegates authority to a managing broker, the managing broker is "authorized" to take action that is otherwise required, pursuant to the Licensing Law, of the designated broker. However, if managing broker fails to act or fails to act responsibly to fulfill the delegated act, then designated broker remains responsible, based on the Licensing Law, to perform the required act.

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.

C. Timely Presentation of All Written Offers

Offers must be presented in a Timely Manner

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

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

The most basic duty of a seller's broker is to help the seller get the best price and terms. It is important to note that if you have a listing that is sold pending; you must still present other offers. The seller cannot sign two agreements, of course, unless one is a back up or subject to the failure of the first offer. If buyer or seller makes an offer to the other, after mutual acceptance, typically an offer to modify the contract, that offer must be presented timely. If a different buyer makes an offer to seller after seller is already in a binding agreement with a buyer, that new offer must also be presented timely to seller.

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

The offers on a property must be presented to the seller as soon as it is received. The listing broker does not have the right to withhold an offer hoping for another one to be written.

If the listing broker receives an offer that he or she believes is not a complete offer it is far lower than what the seller might accept, or was received after the other offers, the listing broker still has the responsibility to present the offer to the seller. When written offers come in that are so low they are offensive or so poorly written they are indecipherable, it is not up to listing broker to determine whether those offers should be presented.

The listing broker sorted the offers from best to worst.

If there are multiple offers and the listing broker sorts out the top one, two or three offers, the seller still has the right to review all the offers presented. Even if broker knows that buyer cannot or will not agree to seller's proposal, broker must present buyer's written offer to seller. When seller has already entered a purchase agreement and a competing offer is presented by a new buyer, the listing broker MUST present it---even if broker anticipates a bad reaction by seller.

When buyer and seller are in contract and seller proposes written modification of the agreement, it is never up to buyer's broker to reject the modification... Even if broker knows that buyer cannot or will not agree to seller's proposal, broker must present seller's written proposal to buyer.

If a summary of each offer is presented to seller, to assist seller in processing the information, the entirety of each offer must also be provided to the seller. It is unlawful for a broker to present something less than the offer as written. Make sure the seller has the ability to review the entire offer.

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

Often there is a date chosen to present all offers to the seller. An offer may have an expiration date prior to that date. If seller is unavailable or refuses to review an offer prior to expiration, then listing broker's file should reflect those circumstances. A best practice is for the listing broker to review any offer received, email it right away to the seller. Follow up with a phone call to notify seller that an offer has been emailed to them. The listing broker can note the that an offer will expire, and thus be void, before the pre-determined offer review date.

Any written offer, notice or communication, to or from a party, no matter how ridiculous, inconsequential, offensive or irritating, must be presented timely. The duty to timely present all written offers persists even after mutual acceptance.

Definition of "a timely manner?"

Brokers have an Agency Law duty to present all written offers in a timely manner.

All offers or communication must be presented in a "timely fashion." Factors within broker's control that delay presentation are unacceptable. If the only relevant factors resulting in delayed presentation are factors under broker's control, broker will have no excuse for failing to make timely presentation.

The determination of timeliness, however, is not always so clear. "Timely" will be impacted by many forces, often outside the control of a broker. Seller may leave on vacation with instructions to hold all offers until seller's return. Buyer may be hospitalized unexpectedly and unable to receive written communications until released. There can be any number of factors that affect "timely" in a given transaction. However, if presentation of a written offer, notice or communication is delayed by forces beyond broker's control, broker should include evidence or a notation of those factors within the transaction file. In defense of a complaint, broker may need to be able to prove that presentation was "timely" given the circumstances, according to the Washington Realtors.

Moreover, all offers must be presented timely. What “timely” means depends upon the circumstances at issue. Certainly, “timely” requires presentation before the offer expires, unless it is impossible to present the offer prior to expiration.

Similarly, absent a seller’s instruction, it is not appropriate to delay presentation of an offer while listing broker hopes for additional offers to be presented, including offers from listing broker’s buyer. If listing broker believes that delayed presentation of an offer is beneficial to seller, listing broker must advise seller of the circumstances and adhere to seller’s subsequent instruction. If seller instructs delay, broker should document that instruction, in writing, in broker’s transaction file.

D. Multiple Offer Situations

In an active market like most of the state is experiencing with limited inventory, a well priced house for sale can generate more than one offer. There are no laws or rules that are written that specifically deal with multiple offer situations. The law does state:

“All offers must be presented to the seller in a timely manner.”

This issue of presenting offers has been discussed on previous pages. All offers must be presented to the seller even if the seller has signed another offer.

Evaluating the Offers

The seller then can evaluate the offer based on the price offered, the buyer’s ability to close based on the lender’s letter and the terms that must be acceptable. The real estate listing broker needs to focus on those issues. The real estate broker is not an attorney nor a lender. Determining one buyer is more qualified than the next based on factors including the money down could be very misleading because a buyer who is well qualified might choose to put less down while a buyer with questionable credit may be required to put more down by the lender. Choosing one buyer over another based on how well they might “fit” in the neighborhood is a discriminatory practice.

It is important to stick with the MLS forms when preparing and presenting purchase and sale agreements. Avoid attempting to write contracts on the blank addendum or you could be in the world of the unauthorized practice of law.

Seller Options

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

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

All offers MUST be presented

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

Disclosure of Multiple Offers

According to the REALTOR Standards of practice clearly requires disclosure of the existence of multiple offers, with the sellers' permission, if a buyer or cooperating broker asks about the existence of multiple offers.

Counter offers

A counter offer is a new offer. Avoid countering two offers at once with "a race to the finish" ending. The house could be sold twice. The seller can accept another offer in a backup position subject to the failure of the first offer.

Avoid selling the house twice

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

Avoid Discrimination

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

Escalation Clauses

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

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

Offer Accepted

When a seller accepts an offer, it is important for the listing broker to take the responsibility to inform the other buyers that their offer was not accepted. It is important to note that this "failure to present offers" has become a significant discipline issue for DOL. It is unlikely that listing brokers are actually failing to present all offers timely. It is far more likely that listing brokers are failing to give unsuccessful buyer brokers proof that seller actually reviewed and rejected buyer's offer, leaving buyer and buyer's broker to wonder whether seller saw buyer's offer at all. Buyers and buyer brokers, frustrated by not getting the property and uncertain as to whether buyer's offer was seen, are more likely to file a complaint with DOL, claiming listing broker failed to present the offer. When DOL investigates, listing broker will have to prove that listing broker timely presented all written offers. Unfortunately, a typical listing file contains no proof of timely presentation.

Listing brokers can avoid this DOL investigation and discipline altogether by giving buyer brokers the courtesy of notification that seller rejected buyer's offer. Returning the offer with the word "rejected" written across the face of the offer, signed and dated by seller, provides proof of seller's timely review and rejection of the offer.

E. Risky Practices in an Abundant Market

Listing Brokers

1. Falsifying Information on Competing Offers

Of course, falsifying information in a real estate transaction is illegal. There are brokers that actually justify relaying false information when there are competing offers. This is in violation of the Uniform Regulation of Business and Professions Act (URBPA) RCW 18.235.130. You have a duty to deal honestly and in good faith.

2. Offer Instructions

All offers must be presented to the seller. If there are offer instructions, they must be signed and agreed upon by the sellers.

3. Review Dates for Offers in the Future

All offers on a property must be presented to the sellers. Often listings include in the offer instructions a seller's review or presentation date. Regardless, the listing broker has a responsibility to present all offers to the sellers right away usually within the day of receipt. Offers have expiration dates and they are often prior to the review or presentation date listed. The seller does have the right to choose an offer prior to a published review or presentation date.

4. Misleading Photos in Listings

Photographers have been editing listing photos on just about every listing. They often adjust lighting, change the sky to be blue and sunny, and use wide angle lenses to change the look of the rooms. But, when the photos change something that affects what the purchaser is buying, that is another thing. For example, cropping out power poles, would be misleading. Though a buyer might see them as they drive up, the photos are also for prospects that evaluate the property just by the photos. The listing broker is responsible for photos that are misleading.

5. Present all Offers in a Timely Manner

This has been said more than once in the class. When a listing broker receives a written offer, it is imperative that it is forwarded to the seller right away which should be within the day.

6. Every Action taken is the Seller's Choice

Listing brokers must remember to know decisions that should be made by the sellers and not brokers decisions. Some brokers have a protocol for listings and don't give their sellers options for decisions.

Buyer Brokers

1. Dangerous Inspection Practices

Washington State is experiencing a wild real estate market with prices climbing constantly, low inventory, and multiple offers. Because of this, buyers have had to waive inspections in order to be competitive. Leaving them to purchase a property without knowledge of its underlying condition. Seller's have ordered pre-inspections to get their property in peak condition, but in the sellers mind, it also opens up problems that they would feel a need to fix and/or disclose.

2. Striking the Information Verification Paragraph

The information Verification paragraph gives the buyer the opportunity to discover errors. The default time limit is ten days. This can be shortened. By striking it, the seller is asking the buyer to waive a right to verify information that may be critical to the buyers decision to buy.

3. Earnest Money early release

Earnest money is held by a neutral third party. The purpose of earnest money is for liquated damages in the event of a default. The assumption when it is released to the seller is that the seller is protected should the buyer fail to close. But, there are circumstances that a transaction fails to close that are of no fault of the buyer. For example, if the seller passes away, the sale is void and yet the buyer has lost the earnest money. The heirs have no obligation to release that money. They could choose to file a lawsuit but it would probably cost more than the loss. Earnest money is best left in the hands of a neutral third party to protect all in case of a default.

4. Post Closing Possession or Rent-Back by the Seller

Washington State passed a law in 2021 focusing on the reasons a landlord can evict a tenant and the process that must be followed. A seller that closes on a property and negotiates remaining in the property for as little as one day after closing whether they are paying rent or not are subject to the new landlord tenant laws. If they refuse to vacate, the buyer does not have the right to just file an unlawful detainer suit to evict them. The new process can take months and could very well last a year. The seller might refuse to vacate because of something like a broken hip or a covid diagnosis. The buyer might be waiting with the truck full of their furniture and bathrobes but cannot move. The buyer who is now a landlord, will be required to pay the mortgage. It is recommended that a broker never write a seller rent-back or a buyer early possession without the client confirming with an attorney.

5. Buyer waiving right to receive Form 17

In an active market such as the one Washington State has been experiencing, buyers have been put in a position to waive their rights in order to be in a competitive position when there are multiple offers. The Property Information Disclosure form is a state law. It is in the best interest of the seller, buyer and their brokers to never waive receiving the form.



Quiz for Core Curriculum 2022-2023

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

1. Every person has characteristics that would fall under the listing protected classes in fair housing laws. True / False
2. It is illegal to discriminate based on a person's gender identity or sexual orientation. True / False
3. It is a violation to discriminate against individuals on the basis of military status or being an honorably discharged veteran. True / False
4. If a seller used the information in a love letter to choose an offer over another offer, that could be construed as discrimination. True / False
5. The late pay or vacate notice was increased to 14 days in Washington State. There is a uniform eviction notice that is mandatory. True / False
6. Upon written request from tenants, a Landlords must a payment plan for the initial deposits and fees and last months rent. True / False
7. A landlord in WA must offer a rent payment plan for new tenants at first move in. True / False
8. A landlord cannot take adverse action against a tenant applicant who had covid. True / False
9. Landlords must give just cause for eviction and follow all requirements. True / False
10. Sellers who rent back or buyer who take early possession fall under the new Just Cause Eviction laws. True / False
11. Landlords will now have a difficult time evicting tenants. True / False
12. There is a landlord mitigation program in WA for landlords suffering losses from unpaid rent. True / False
13. The Eviction Resolution Program applies to all counties in WA and matches landlord and tenants to specialists. True / False
14. 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
15. A seller listed above the price range given by the listing broker. The property didn't sell, and the seller sued the brokers. True / False
16. The Beauregard's case focused on a disgruntled seller when the house didn't sell because it was overpriced for the market. True / False

17. A broker must convey all correspondence to the client once the broker is rendering brokerage services. True / False
18. A real estate broker must furnish all correspondence regarding a transaction to the firm's transaction log. True / False
19. Real estate brokerage services means any of the services offered directly or indirectly for the promise of compensation. True / False
20. An escalation clause has been used to help a buyer negotiate a higher sales price than another offer. True / False
21. The evidence of funds form should be used on all transactions where the buyer is relying on funds True / False
22. The buyer and their broker are not allowed to provide the seller with the inspection report without the seller's permission. True / False
23. If there is wrongful delivery of the inspection report without seller's permission, the buyer is in breach of contract. True / False
24. If a buyer breaches contract by providing the inspection report, damages would be determined by the seller and their lawyer. True / False
25. Closing means the date on which documents are recorded and the sale proceeds are available to the seller. True / False
26. When computing time from the closing date, counting days starts on the day prior to closing and shall not end on a weekend or holiday. True / False
27. " If not waived, the financing contingency shall survive the closing date" is on the financing addendum. True / False
27. Brokers not responding to phone calls regarding transactions is one of the top types of complaints from the consumers. True / False
28. Brokers must confirm that the earnest money has been received and deposited. True / False
29. A Designated Broker can delegate responsibilities for the firm to a licensee with a Managing Broker's license. True / False
30. The Designated Broker remains liable for all actions taking by a Managing Broker who has been assigned a responsibility. True / False
31. All delegation of duties from a Designated Broker to a Managing Broker must be in writing. True/ False
32. Overseeing a broker licensed less than 2 years is an example of a duty a Designated Broker can delegate to a Managing Broker. True / False
33. All offers on real estate must be presented to the seller in a "timely manner." True / False
34. If a property for sale has a mutually signed offer, the law requires that all offers still must be presented to the seller. True / False

35. A seller cannot sign two agreements to sell the property, but the seller can sign a back-up offer if the first should fall apart. True / False
36. The listing broker does not have the right to withhold an offer from the seller hoping for another offer to be written. True / False
38. If there are multiple offers with some written much lower than the others, the seller still has the right to review all offers. True / False
39. If the seller agrees to an offer review date, any offer received prior to that date must be presented to the seller when received. True / False
40. A broker cannot delay presenting offers to the seller for any reason under the broker's control. True / False
41. In most cases, presenting an offer in a "timely manner" would be to email the offer within the day it is received. True / False
42. When an offer is accepted it is a best practice, not a law, to inform the other buyers that their offer was not accepted. True / False
43. Every action or decision by a listing broker must be the seller's choice. True / False
44. A listing broker should never include misleading photos in a listing including photoshopping out powerlines or adding views. True / False
45. Any offer instructions must be agreed upon and signed by the seller. True / False
46. Brokers have a duty to deal "honestly and in good faith." Any falsifying of information on a listing would violate their duties. True / False
47. It can backfire on buyers if they waive their right to an inspection. Buyer agents should make sure they are aware of that. True / False
48. It may be a best practice to shorten the time on the "information verification" section on the agreement rather than striking it. True / False
49. Early release of earnest money can be a serious problem if the seller who receives it fails to close the transaction. True / False
50. The Form 17 Disclosure statement is a state law. It is best to not consult buyers to waive their right to receiving it. 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 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