



Washington Real Estate Law

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



Washington Real Estate Law

1. This is a 30 CLOCKHOUR CLASS called Washington Real Estate Law. It is required for all brokers to take before their first two year renewal. Any broker can take it for the 30 clockhour renewal requirement as long as they also add the Core Class and Fair Housing. The curriculum is included breaking down the class material. There are objectives for each section.
2. You will be provided with a PDF booklet of with the class material. You are to read the material which is divided into 4 sessions.
3. This class **must be taken over a 4 day period**. It is designed to take one of the 4 sessions for 7.5 hours each day. In Washington State a “clock hour” is 50 minutes so there is break time built in. You cannot take 30 hours in a 24 hour day!
4. **Answer** the questions on the quiz sheet. There are questions for the exam at the end of each session. They can be answered while reading the material, at the end of the session, or at the end.
5. If you have any questions regarding the material or the questions, don't hesitate to email Natalie Danielson.
6. **E-Mail** 4 Quizzes and Final Test and Mandatory Evaluation to Professional Direction.
7. The certificate will be mailed or emailed within 48 hours (**or sooner!**)of receipt of course materials and handout.

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.

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Washington Real Estate Law

Curriculum

Section 1 7½ hour	Washington Licensing Law Understand basic civil law and criminal law Identify the basic civil law concepts Identify the major changes in the Real Estate License Laws 18.85 Know the changes in the changes in the Washington Administrative Code WAC's. Be aware of how the changes in the laws affect the real estate licensee. Know where to find the actual documents of the laws and rules as written. Be able to identify the landlord and tenant responsibilities under the Landlord Tenant Act. Know that any property management activities that an agent performs must be under the supervision of the Designated Broker	Lecture Discussion Quiz/ action items
Section 2 7½ hour	Washington Law of Agency Define agency relationships under the Washington State Law of Agency Know the definitions of terms in the Law of Agency. List the duties of an agent generally, as a buyer's agent, a seller's agent and a dual agent. Know the 5 exceptions to the presumption of buyer agency. Define "client" relationships and when a prospect becomes a client. Identify when the agency relationship commences and terminates. Know when to disclose agency Know when to provide a pamphlet to a consumer on the Law of Agency. Identify the relationship between compensation and agency. Know the terms "vicarious liability" and "imputed knowledge." Identify the disciplinary actions the Director of the Department of Licensing with regards to the Law of Agency.	Lecture Discussion Quiz/ action items

Section 3 7½ hour	Contract Law Know the definition of a contract Be aware of what constitutes a legal contract Understand terminating and modifying a contract Be able to know when an breach of contract occurs and the remedies Know offer and acceptance, multiple offers and fraud Know about listing agreements Understand Purchase and Sales agreements including notices, contingencies, addendums and inspections	Lecture Discussion Quiz/ action items
Section 4 7½ hour	Current Legal Issues Fair Housing and Anti Discrimination Carbon Monoxide law Landlord tenant legal issues Title Insurance Regulations Short Sales and Foreclosures Fraud in real estate transactions Property information disclosures	Lecture Discussion Quiz/ action items

Washington Real Estate Law

Real estate brokers work on transactions with clients dealing with huge investments and contracts. It is imperative to understand the laws that pertain to the practice of real estate as almost every action is governed by local, state and national laws.

Course Objectives

As a result of taking this class the real estate licensee shall be able to:

- Understand the structure of the Real Estate Firm under license law including the responsibilities of Brokers, Designated brokers and Branch Managers.
- Understand the basics of Trust accounting, earnest money and auditing.
- Learn about the Uniform Regulation of Business and Professions Act.
- Understand the Law of Agency including definitions, relationships, presumption of buyer agency and disclosure of agency.
- Know when the agency relationship commences and terminates, when to provide a pamphlet on agency to consumers.
- Know the definition of a contract, what constitutes a legal contract.
- Understand what terminates a contract.
- Be able to know when a breach of contract occurs and the remedies.
- Know offer and acceptance, multiple offers and fraud.
- Know about listing and sales agreements.
- Be aware of the most common legal issues affecting the industry including Fair Housing, Carbon Monoxide, Landlord Tenant, Title Insurance Regulations, Short Sales and Foreclosures, Fraud and Property Disclosure.

Section 1

Intro to Legal System and Washington License Law

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

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

Section 1 Objectives

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

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

Introduction to the Legal System

The law is a system of rights and duties established and enforced by a government. The business of real estate is all performed under a great number of laws and rules. In order to practice as a licensed real estate agent, it is imperative to understand how to work within the laws. But, real estate agents are not licensed to give legal advice.

Civil vs. Criminal law

When one individual or company sues another for compensation it is a civil suit. The goal is to compensate the injured for the harm that was done. The remedy is usually a monetary award or damages paid by the person who caused the injury.

A crime is an act that is dangerous to society and causes harm as a result of another's act. The government can start a criminal action without the victim's cooperation or if there was no victim. Criminal suits are to punish the wrongdoer and prevent the person from committing more crimes.

Most real estate lawsuits are civil because the injured party wants compensation for damages. But, in the case of fraud, for example, the government might file a criminal lawsuit. The victim can also file a civil suit for damages.

Civil Law Categories

There are three basic categories under civil law. They include:

Contracts which are legally binding promises. When parties have a contractual relationship they voluntarily take on legal duties.

Torts are not voluntarily assumed but imposed by law. The law imposes the duty on everyone to take reasonable care to avoid injuring another person or damaging property. Tort law is the body of rules concerning legally imposed duties and standards of reasonable conduct.

Property law concerns ownership of or an interest in real or personal property. It includes acquiring and losing property and the rules about the rights and duties.

Civil lawsuits can cross over all these categories in a real estate case. There may be someone that is injured on a property near the property line during the sale of a property.

How are laws made?

Laws are made in 4 different ways.

Constitutional law is the fundamental law where all other laws must comply. There is the United States Constitution and the Washington State Constitution.

Legislatures create statutory law. The laws adopted by US Congress and the 50 State Legislatures are called statutes. In Washington State the statutes are published in a set of volumes called the Code. It is called the Revised Code of Washington because it was revised in 1950. The Washington Administrative Code is the rules that go along with the Laws.

The courts create laws by setting precedent setting decisions. Issues of law are always determined by a judge.

Administrative agencies also create laws. They can include for example the Department of Housing and Urban Development on a Federal level. In Washington State they can include the Department of Licensing. In counties and cities there are building departments, zoning, and planning commissions.

The Consumer Protection Act

In Washington State the Consumer Protection Act RCW 19.86 is to protect the Washington State marketplace free from unfair and deceptive practices. The Consumer Protection Act is enforced by the Consumer Protection Division under the Washington State Attorney General's office. The Division investigates and files legal actions to stop unfair and deceptive practices, recover refunds for consumers and imposes penalties on offending businesses and recovers attorney's fees and costs.

Washington State License Law

In the simplest terms, license law requires that a person have a real estate license to sell or lease real property for another for a fee. License laws are created by each state and not federal laws.

Who and what is required to obtain a license, experience and testing, disciplinary actions, and continuing education is included in the Washington State License Law RCW 18.85 and the Washington Administrative Code WAC 308-124.

It took 7 years and dozens of meetings, committees, emails, industry groups to finally pass the most widespread changes done to Real Estate License laws since they were written in 1925. Changes that became effective in July 2010 include new categories of licensure, heightened supervision of new agents, more educational requirements, more detailed responsibilities, and detailed recordkeeping including digital records.

Structure of the Real Estate Firm

Firm Licensing

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

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

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

In order to apply as a firm, a Designated Broker must be in management of the firm per WAC 308-124A-735. The Designated Broker, in order to qualify must be either the:

- Officer of the corporation,
- Manager or member of the LLC,
- Partner in an LLC,
- A general partner in the partnership

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

Designated Broker

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

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

Designated Broker Responsibilities WAC 308.124C-125

The Designated Broker is responsible to:

- Assure brokerage service contracts or activities in which he/she participated follow the rules/laws of DOL
- Cooperate with the DOL in an investigation, audit or licensing matter
- Ensure accessibility of the firm’s offices and records to the DOL
- Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance.
- Ensure policies or procedures are in place to account for safe handling of customer or client funds or property.
- Maintain up to date written assignments of delegation of Managing Brokers or Branch Manager Duties:
 - Delegating responsibility must be only to Managing Brokers licensed to the firm. Address in writing the duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and Managing Brokers.
 - Must also address the heightened supervision of brokers that are licensed for less than 2 years and the hiring, transferring, and releasing licensees to or from the firm.
- Maintain and implement written policies on:
 - Referral of home inspectors in compliance so that there is a procedure for referring home inspectors to buyers or sellers addressing the consumers right to freely pick one and prevent any collusion between the inspector and the agent.
- Regarding the levels of supervision of all Brokers and Managing Brokers of the firm:
 - Review with initials of all purchase or lease documents for agents licensed less than 2 years within 5 days of mutual acceptance.
 - Ensure all persons in the firm are appropriately licensed
 - Ensure all licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
 - Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and related rules
 - Be responsible for ultimate oversight of the firm.

Managing Broker

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

“Managing Brokers” the minimum requirements are:

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

Managing Broker Responsibilities WAC 308.124C-135

The Managing Broker is responsible to:

- Assure all real estate brokerage services he/she participated in are in accordance with the license laws and rules.
- Cooperate with the DOL in an investigation, audit or licensing matter
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Keep the DOL informed of his or her address
- If **delegated** by the Designated the Managing Broker is to:
 - ♦ Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance and policies or procedures are in place to account for safe handling of customer or client funds or property.
 - ♦ Keep accurate records, , review of contracts, modify or terminate brokerage service contracts for the firm,
 - ♦ Ensure proper and legal advertising by brokers working under the Managing Broker
 - ♦ Ensure all persons representing the firm under the Managing Broker has delegated authority to supervise are appropriately licensed,
 - ♦ Ensure licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
 - ♦ Follow and implement the Designated Brokers written policy on Referral of home inspectors and address levels of supervision of all licensees which includes review of new brokers under 2 years of licensure.

Recent Department of Licensing Disciplinary Action

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

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

Finding: Failed to supervise the activities of a salesperson.

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

Real Estate Broker

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

Broker Responsibilities WAC 308.124C-140

Brokers are responsible to:

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

Branch Manager

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

Each Branch office:

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

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

Branch Manager Responsibilities WAC 308.124C-130

The Branch Manager if delegated is responsible for:

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

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

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

Educational Requirements

Current Broker	30 hrs Electives (includes 3 hr Core Curriculum)
PreLicense	60 hrs Fundamentals 30 hrs Real Estate Practices Then Take the State Exam
First Renewal	30 hrs Advanced Practices 30 hrs Real Estate Law 30 hrs Electives includes Core and Fair Housing
Subsequent 2 year Renewal For All Brokers	30 hrs Electives includes Core and Fair Housing
To get Managing Brokers License	30 hrs Broker Management 30 hrs Business Management 30 hrs Advanced Real Estate Law Then take the State Exam You can't use these 90 hours or part of them for your two year renewal if you want to use for MB license.

Responsibilities within a Real Estate Firm

Delegating Responsibilities

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

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

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

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

Supervisory Responsibilities

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

A Designated Broker may delegate by written agreement the handling of funds, trust account records, transaction records and supervision of Brokers to a Managing Broker licensed to the firm. The Designated can also delegate to a Managing Broker by written agreement the authority to amend, modify, bind, create, rescind, terminate, or release real estate brokerage serviced contracts on behalf of the firm.

During the first two years of a Broker's license, a Managing broker must provide a heightened level of supervision. The Managing Broker delegated the duty to supervise a new agent the first two years is delegating certain responsibilities by the Designated Broker.

The Designated Broker can delegate the responsibility to a Managing Broker to supervise the new licensees under 2 years of licensure. It must be done with written agreement.

All brokerage service contracts which involve a new licensee under 2 years must be reviewed by the Designated Broker (or Managing Broker, if delegated in writing) within 5 calendar days of client's signature.

Note that the word "Team" is not in the broker license law. Should the designated broker choose to delegate responsibilities of management of one or more agents to a person, that person should hold a managing brokers license.

Fingerprint and Background Requirements

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

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

All real estate brokers are fingerprinted when they obtain or renew a license after July of 2010. For those licensed prior to July 2010 they will be chosen to be fingerprinted over a 6 year period as their licenses renew. Then fingerprints and background check will be required every 6 years as per WAC 308-124A-700.

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

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

When a fingerprint card is rejected the applicant must submit to the department new fingerprint card within 21 calendar days of written notice. Failure to submit a new fingerprint card will result in a suspension until the fingerprint card is received by the department. If the fingerprint card is rejected three times, the applicant must pay a new fee for fingerprinting and background processing according to WAC 308-124A-700.

Advertising Requirements

License law has required that the name of the real estate office as licensed be on all advertising. But, many real estate agents were putting the name of the office so small and hidden in their advertising that it was nearly impossible to identify the actual real estate office where their license was hanging. The law specifies that the Firm Name must be on all advertising so that it is very clear to the consumer. If you have a team name, you still must have the firm name clear and conspicuous.... Unless your Designated broker has applied for your team name as an assumed name.

A firm must advertising using their firm name (or an assumed name registered with the state) as licensed. WAC 308-124B-210

(1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.

(2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:

(a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.

(b) Not use a name, title, or brand suggesting a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."

(c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."

(d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

All advertising by an individual licensee or a licensee operating as a team must always have the firm name unless the team name has been registered with the state as an "assumed name."

The firm name must be "**clear and conspicuous**" in any advertising.

- This means the representation or term being used is of such a color, contrast, size or audibility is presented in a manner so as to be readily noticed and understood. RCW 18.85.011.
- It is a violation of license law if a licensee advertises in any manner without including the firm name or assumed name as licensed in a clear and conspicuous manner. RCW 18.85.361(8).

This is a consumer protection issue because it is important for the consumer to recognize the firm as licensed and have appropriate contact information should they want to contact the DOL or the firm. Many agents don't use their firm name on their internet advertising.

Advertising on Third Party Websites

With the click of the mouse and an agent's listings can be spread all over the internet on an untold number of 3rd party websites. The challenge is that the agent often does not always know where they are posted and don't keep the information up to date and accurate. It is important for brokers to follow up on problem with listings that have not been updated.

Required Records

All real estate Brokers and Managing Brokers must submit complete copies of their transactions to their firm according to RCW 18.85.285(1) The Designated Broker is responsible that all transaction documents must be submitted to the Designated Broker or Designated Managing Broker within a “timely manner” according to WAC308-124C-125(11). The records must include but are not limited to a copy of the Purchase and sale agreement, earnest money receipt, and an itemization of the receipts and disbursements with each transaction. They also must include all correspondence and other pertinent information about the transaction.

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

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

All records must be retained and available for the DOL for a minimum of 3 years.

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

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

Termination/Closing

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

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

A licensed relationship can be terminated unilaterally by either the Broker, Managing Broker, Branch Manager, or Designated Broker. All terminations shall be by written notice to the Designated Broker or the person who they may have designated that responsibility. All terminations must be forwarded to the DOL and becomes effective on the postmark, fax or hand delivery of license to DOL. The Department of Licensing SecureAccess.wa.gov account is where a licensee or a designated broker can terminate a license. A licensee can leave a firm at any time online without the permission of the designated broker or manager.

Termination cannot be conditioned on any specific performance by either party.

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

Trust Accounting, Earnest Money, Auditing

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

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

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

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

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

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

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

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

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

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

Administration of Funds Held in Trust

General Procedures WAC 308-124E-105

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

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

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

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

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

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

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

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

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

Audits

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

During an audit, the auditor will:

- Review the law about controlling interest in a real estate business with the designated broker or representative.
- Observe business signage and advertising, including, but not limited to letterhead, business cards, and promotional items.
- Examine the licenses of the firm, designated managing broker, managing brokers, and brokers to verify:
 - The licenses are current and up to date.
 - The licenses are available to the public.
 - The license names are used properly.
- Verify that the firm's Master Business License and Uniform Business Identifier (UBI) numbers match the DOL license.
- Verify controlling interest in the firm.
- Verify all assumed (DBA) names.
- Review the firm's written policy/procedures manual and delegations of authority.
- Confirm that any civil or criminal actions have they been reported to the Department of Licensing (DOL).
- Determine if the office is a main office, a branch, or the only office for the firm.
- Determine where branch office records are kept.
- Review brokerage transaction files within the last 3 years, including:
 - Log files
 - Listing agreements
 - Closed and pending purchase and sale contracts, including addenda special agreements and attachments
 - Failed sales
 - Relationship disclosures for dual agency
 - Mutual agreement dates
 - Closing statements
 - Earnest money receipts (delivery of earnest money) for both listing and sales files
 - All other documents and correspondence related to transactions
 - Reviews of brokerage service contracts involving any affiliated licensee with less than 2 years' experience.
- Review and reconcile brokerage trust accounts, including owners, tenants, associations, and earnest money accounts. The auditor will generally examine bank records for all trust accounts for the 3 months before the audit. However, he or she may request up to 3 years of records if necessary. The audit may review the following records:
 - Bank statements
 - Pre-numbered check stock

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

What happens after the audit

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

If the audit finds problems

The designated broker should immediately start correcting any problems found in the audit.

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

The Uniform Regulation of Business and Professions Act

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

Disciplinary Authority

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

RCW 18.235.030 disciplinary authority has the power to:

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

- (13) Establish panels consisting of three or more members of the board or commission to perform any duty or authority within the board's or commission's jurisdiction under this chapter; and
- (14) Contract with licensees, registrants, endorsement or permit holders, or any other persons or organizations to provide services necessary for the monitoring or supervision of licensees, registrants, or endorsement or permit holders who are placed on probation, whose professional or business activities are restricted, or who are for an authorized purpose subject to monitoring by the disciplinary authority. If the subject licensee, registrant, or endorsement or permit holders may only practice or operate a business under the supervision of another licensee, registrant, or endorsement or permit holder under the terms of the law regulating that occupation or business, the supervising licensee, registrant, or endorsement or permit holder must consent to the monitoring or supervision under this subsection, unless the supervising licensee, registrant, or endorsement or permit holder is, at the time, the subject of a disciplinary order.

Sanctions under the Act

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

RCW 18.235.110 Sanctions

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

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

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

(3) Any of the actions under this section may be totally or partly stayed by the disciplinary authority. In determining what action is appropriate, the disciplinary authority must first consider what sanctions are necessary to protect the public health, safety, or welfare. Only after these provisions

have been made may the disciplinary authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

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

Unprofessional Conduct Defined

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

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

RCW 18,235.130 Unprofessional Conduct

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(2) Misrepresentation or concealment of a material fact in obtaining or renewing a license or in reinstatement thereof;

(3) Advertising that is false, deceptive, or misleading;

(4) Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;

(5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;

(6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:

(a) Not furnishing any papers or documents requested by the disciplinary authority;

(b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;

- (c) Not responding to a subpoena issued by the disciplinary authority, whether or not is the accused in the proceeding; or
- (d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;
- (7) Failure to comply with an order issued by the disciplinary authority;
- (8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);
- (9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;
- (10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;
- (11) Misrepresentation in any aspect of the conduct of the business or profession;
- (12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;
- (13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;
- (14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action; and
- (15) Engaging in unlicensed practice as defined in RCW 18.235.010.

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

Department of Licensing Disciplinary Actions

These are just some basic examples of brokers that had disciplinary actions taken by the Department of Licensing because of conduct that violated the laws.

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.
Action: Broker's license suspended until such time as he responds to our request for information.

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.
Action: Broker's license suspended until such time as he responds to our request for information.

Finding: Repeatedly failed to permit us to conduct an audit of the company's records and to respond to our requests for information.
Action: Broker's license revoked for 10 years or until she submits to a complete audit and provides all records requested.

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

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.
Action: Broker's license suspended until such time as he responds to our request for information and pays a \$500 fine.

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

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

Employment law

An employee is anyone who performs services for an employer if the employer can control what will be done and how it will be done. Independent contractors are defined so if the payer or employer has the right to control or direct only the result of the work done, and not the means and methods of accomplishing the result.

Real Estate agents are not considered to be employees for tax purposes. They are considered to be self-employed for all federal income and employment tax purposes if:

- All their payments are directly related to sales or other output rather than the number of hours worked; and
- All work is done under a written contract that states they will not be treated as employees for federal tax purposes.

Washington State Employment Law affecting Brokers

Real estate agents in Washington state are most often considered self employed. They do not qualify for unemployment compensation. But, real estate agents do fall under the umbrella of workers compensation known as industrial insurance under the Department of Labor and Industries.

According to a 1993 court decision in Washington State, it made it clear that real estate firms are responsible for providing workers comp for the affiliated licensees even though they are independent contractors. Premiums are paid by the employer into a state fund to be used to pay for an injured worker's medical care. Some of the premiums can be passed on to the licensees.

Section 1 Legal System and Washington License Law

Quiz

1. T / F When one person files a suit against another for compensation, it is a criminal suit.
2. T / F A crime is an act that is dangerous to society.
3. T / F There are three different categories of civil law include: Contract law, Torts, and Property law.
4. T / F The Washington State Consumer Protection act helps keep consumers free from deceptive marketing practices.
5. T / F All responsibilities a Designated Broker delegates to a Managing Broker must be in writing.
6. T / F All real estate Salespersons will have to take a test prior to July 2010 to comply with the new law to have the title of Broker.
7. T / F To obtain a Managing Brokers license, a Broker must take 120 hours.
8. T / F Only new real estate brokers will be required to have fingerprint and background checks
9. T / F If you have been fingerprinted by another agency, it will automatically transfer to the Real Estate Department of Licensing.
10. T / F A real estate salesperson can use the title, Broker.
11. T / F A Broker can own and manage a real estate firm after July 2010.
12. T / F Those who want to become Brokers are required to take Fundamentals AND Practices before taking the exam.
13. T / F Contracts drafted by Brokers in RE for less than 2 years must be initialed by a Managing Broker delegated that responsibility.
14. T / F Designated Brokers can delegate responsibilities including balancing trust accounts to Managing Brokers.
15. T / F If you want to be a Designated Broker you are required to take a test, have experience, and own a brokerage.
16. T / F The Department of Licensing will register Designated Brokers.
17. T / F In order to be a Branch Manager, a Broker must be a Managing Broker.
18. T / F A Branch Manager responsibilities must be delegated in writing by the Designated Broker of the Firm.
19. T / F For the first time, all real estate Firms will be required to have a license.
20. T / F The Designated Broker for a Firm must provide proof of ownership/ controlling interest.
21. T / F Only the Designated Broker can delegate responsibilities to a Managing Broker to supervise new Brokers.
22. T / F When a Designated Broker delegates responsibilities to a Branch Manager, the Designated Broker remains ultimately responsible.
23. T / F The Designated Broker can delegate responsibility for the handling of trust account records to a Broker.
24. T / F A Designated Broker or the Managing Broker with written duties, must initial all contracts by new Brokers within 5 days.
25. T / F All advertising by a broker must have the firm logo larger than the brokers name.
26. T / F The firm name must be "clear and conspicuous" on all advertising by the broker.
27. T / F All transaction records must be kept by the Designated Broker for 7 full years according to the Department of Licensing.
28. T / F Transaction files kept by the Designated Broker only need to contain the contract and the closing statement.
29. T / F A Managing Broker that leaves a firm must give the Designated Broker written notification of Termination.
30. T / F Termination can be conditions on the performance of some contract or payment of commission.
31. T / F All advertising by Brokers must have the Firm Name "clear and conspicuous."
32. T / F The firm name must be on all advertising done by a broker.

33. T / F Any real estate transaction funds that a Broker exercises control over are considered “trust funds.”
34. T / F A Designated Broker holding funds in trust can provide written notification to all parties and choose how to disburse funds.
35. T / F The Designated Broker is ultimately responsible for all trust funds that are held in the Firms separate bank account.
36. T / F A Firm’s property management agreement must contain the type of property and the number of units.
37. T / F A team can advertise using an “assumed name” if the Designated Broker approves and registers the name with the Dept of Licensing.
38. T / F A Designated Broker is a Managing Broker with an “endorsement” from the Department of Licensing.
39. T / F A Designated Broker must have a written log of delegated assignments to Managing Brokers.
40. T / F A Broker can be delegated the responsibility to be a Branch Manager.
41. T / F If a fingerprint card is rejected, the licensee has 21 calendar days after written notice to submit a new card.
42. T / F When applying for a first time real estate license, an applicant must have a high school diploma or equivalent.
43. T / F New Brokers licensed less than 2 years must submit all contracts to the Designated Broker or delegate within 5 days.
44. T / F All real estate records must be kept at an address or readily retrievable where the real estate Firm is licensed.
45. T / F The Designated Broker is required to keep all records available for the Department of Licensing for a minimum of 7 years.
46. T / F A written policy must be written by the Designated Broker regarding referral of home inspectors.
47. T / F All new Brokers after July 2010 will be required to take 90 clock hours of continuing education before their first renewal.
48. T / F The Core Curriculum class is required for all licensees for each renewal.
49. T / F Trust Accounts must have the firm name as licensed.
50. T / F Designated brokers must keep records for the auditor for 3 years
51. T / F The Uniform Regulation of Business and Professions Act was created to consolidate disciplinary procedures
52. T / F Even though real estate agents are considered independent contractors, they are still required to pay Workers Comp.

Section 2

REAL ESTATE LAW OF AGENCY

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

In July 2010 many changes were made to real estate license laws. All real estate agents are now “brokers” and associate brokers are “managing Brokers” Firms will all now have a license.

Section 2 Objectives

As a result of taking this section of the Washington Real Estate law class the broker shall be able to:

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

What is an Agent?

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

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

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

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

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

1. Clarify the law of agency as applied to real estate brokers.
2. Create presumptions of agency relationships with customers consistent with their natural expectations, while retaining some flexibility for alternate relationships,
3. Reduce instances of dual agency,
4. Limit the liability of brokers under the doctrine of vicarious liability and imputed knowledge.

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

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

Changes to the Law of Agency will occur in January 2024 and will be available here.

Law of Agency Definitions

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

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

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

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

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

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

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

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

(6) "Confidential information" means information from or concerning a principal of a licensee that:

- (a) Was acquired by the broker during the course of an agency relationship with the principal;
- (b) The principal reasonably expects to be kept confidential;
- (c) The principal has not disclosed or authorized to be disclosed to third parties;
- (d) Would, if disclosed, operate to the detriment of the principal; and
- (e) The principal personally would not be obligated to disclose to the other party.

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

(8) "Broker" means a real estate broker, managing real estate broker, as those terms are defined in Chapter 18.85.

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

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

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

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

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

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

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

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

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

Creating Agency Relationships

Agency can be created by express or implied agreement.

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

Express Agreement

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

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

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

Implied agreement

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

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

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

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

Ratification and Estoppel

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

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

Agency Relationship Definition

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

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

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

Brokerage Services

Chapter 18.85 RCW is the Real Estate License Law. The performance of any of the following acts by a real estate broker, managing broker or real estate designated broker would be construed as brokerage services according to Real Estate License Law RCW 18.85.010 (1).

“A licensee acting for another for commissions or other compensation or the promise thereof, or while acting in his or her own behalf, who:

- a. Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;
- b. Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;
- c. Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental or lease of the land upon which the manufactured or mobile home, or will be, located;
- d. Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or
- e. Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts.”

Who do you represent and when?

Commencing an Agency Relationship

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

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

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

- a. Showing property to prospective buyers.*
- b. Cold calling to neighbors about a new listing.*
- c. Serving a cup of coffee to a prospective buyer.*
- d. Answering questions from an ad call when on floor time. (Would you need a license to answer a question about price if listing was on the internet? What if the question was about writing an offer on the property?)*
- e. Searching the MLS for properties for a buyer.*
- f. Negotiating a lease for a tenant.*
- g. Making repairs to a property that is for sale. (real estate brokers should not be contractors on their listings)*
- h. Discussing market value of a property with a seller.*

There is no exact answer as to when an agent is providing brokerage services because their actions and words could imply far more than the small examples given. In the examples above, the agent could be performing brokerage services in a, b, d, e, f, g. Serving coffee and making repairs are not actions that would require a real estate license. Answering questions about a listing when the information is available to the public on flyers and the internet would not require a real estate license.

Buyer agency

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

This agency relationship is presumed. It does not have to be in writing. There are disclosure forms and buyer agency contracts used throughout Washington State.

Seller Agency

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

Who are you Representing as an Agent?

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

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

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

Exceptions to the presumptions

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

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

1. The broker has entered into a written agency agreement with the seller, in which case the broker is a seller's agent;
An example would be a listing agreement.
2. The broker has entered into a sub-agency agreement with the seller's agent, in which case the broker is a seller's agent;
An example might be that the agent is working as a subagent under the seller's agent... possibility holding an open house.
3. Broker's firm has appointed broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the **broker's firm has appointed the broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer**, in which case the broker is a dual agent.
4. The broker is the seller or one of the sellers *An example could be an agent selling their own property.*
5. The parties otherwise in writing after the broker has complied with section 3(1) (f) of the act."

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

To avoid any possible misunderstanding by a consumer and avoid any chance of undisclosed agency it is imperative that the real estate licensee know at all times whom they represent! Again, this is very important... know who you represent at all times!

Agency Confusion

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

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

The agent may be on the team with the listing agent. The buyer would not necessarily know when talking to the agent. The agent may be a sub agent of the listing agent and his or her name may not appear on the sign. Who does the buyer represent?

The agent gets a sign call and runs out to show a property listed with another broker in the office. Who does the agent represent and when is it disclosed to the buyer?

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

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

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

Discussion of the agency relationship is extremely important because if you do not represent a prospect, it needs to be clear. The best way to disclose agency is by using the buyer agency agreement.

Buyer Agreements

The Law of Agency creates a presumption of buyer agency. When establishing a buyer agency, a written agreement is required by law. There are a number of reasons why a written agreement with the buyer can clear up any confusion.

A written agreement with a buyer:

- Discloses the agency relationship with the buyer in writing.
- Gives the buyer written consent for dual agency.
- Details terms of compensation.
- Can protect agent commission if buyer purchases with another agent.
- Puts commission in writing if there is no listing agreement.

In- House Transactions

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

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

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

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

Who does the Designated Broker of the office represent? Doesn't the Broker represent the seller since there is a listing agreement? Not necessarily. When the real estate office has a listing the agreement has a clause authorizing dual agency. If another agent under the Broker's supervision has an offer on the property for his or her clients, then the Broker becomes a dual agent. The listing agent represents the seller. The selling agent represents the buyer.

Transaction specific agency relationships

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

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

This situation could happen if a broker represents a buyer on the sale of a house. The broker writes up a purchase and sale agreement and negotiates the sale for the buyer as a buyers agent.

Then the sellers, who are totally impressed with the conduct and expertise of the buyers agent decide that they want the same agent to represent them when they go to purchase their next home.

The broker did not represent the sellers when negotiating the sale of the house. The broke did represent the sellers when they found another house to purchase.

Terminating an Agency Relationship

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

1. Completion of Performance

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

2. Expiration of the Term

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

The term may be extended when the agreement is extended.

3. Termination by Mutual Agreement

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

4. Notice from one party to another

There are times that the principal (OR the agent) do not want to continue the relationship.

When working under a listing agreement, there is a term agreed upon. If one of the parties chooses to terminate the agency relationship and the agreement, there may be contractual issues that may have to be resolved. For example, the seller may be liable for damages or costs incurred by the listing broker should the seller choose to unilaterally revoke the agreement.

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

5. Operation of Law

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

Duties that survive agency

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

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

Duties of a Broker

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

Fiduciary vs Statutory Duties

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

General Duties of a Broker

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

1. "To exercise reasonable care and skill."

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

2. "To deal honestly and in good faith."

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

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

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

Sometimes listing brokers will tell other brokers that the seller does not want to see further offers after the property has gone pending. It is important to note...that the law does require that all written offers are to be presented regardless if there is an existing sale. Remind the seller that this has been included in the law and that the inconvenience of having another offer doesn't really give the buyers the chance to get their offer read.

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

Note the definition of material facts in the Law of Agency. This is the law for real estate brokers and not included in the property information disclosure law.

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

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

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

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

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

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

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

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

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

Confidential Information

The law of agency defines confidential information as:

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

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

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

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

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

What are examples of confidential information for the seller?

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

What are examples of confidential information for the buyer?

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

Material Facts

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

A material fact is information which:

1. Substantially and adversely affects the value of the property.
Buyers might not pay that price had they known the material fact.
2. Substantially adversely affects a party's ability to perform its obligations in a real estate transaction.
The buyer may not be able to qualify for a mortgage.
3. Operates to materially impair or defeat the purpose of the transaction.
*The seller might not be able to actually be able to transfer ownership.
The buyer would never buy the property with the material fact that was not disclosed.*

Information must be disclosed to the buyer if the information would affect:

- the buyer's decision to buy, or
- how much the buyer would pay.

The same goes for the seller. Disclosure of information that would affect a seller's decision, must be disclosed.

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

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

One of the hottest issues in the real estate industry is a negative stigma that may affect property. A negative stigma can include:

- A property psychologically impacted
- An event that occurred or suspected to have occurred on the property
- A stigma that does not affect the physical condition or title to the property.

Examples of negative stigmas.

- A neighbor's kid commits suicide in the backyard.
- A ghost has appeared to the brother in the dining room.
- The house has been burglarized every month on the 15th of the month.
- A group of sun worshippers arrives in the yard each solstice.
- There is a sex offender next door.
- There was a gang shooting in the neighborhood.

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

If a seller wants to keep something secret from the buyer and the buyer subsequently finds out the secret then a lawsuit could follow. The decision to keep a negative stigma secret from a prospective buyer should not be made by the broker or encouraged by an broker. The broker should consult with the designated broker. The seller should consult with counsel also.

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

Duties of a Seller's and Buyer's Agent

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

Duties of a Seller's Agent

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

Duties of a Buyer's Agent

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

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

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

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

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

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

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

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

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

Duties of a Dual Agent

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

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

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

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

Dual Agency

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

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

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

Under the amended Law of Agency RCW 18.86.020 it states:

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

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

Contact your Designated Broker or Branch Manager how to best comply with this statute when working as a dual agent.

Compensation

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

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

According to the Law of Agency regarding compensation:

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

Note, that the commission is always paid to the designated broker according to license law.

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

In the past the agents in a real estate transaction typically represented the seller or were subagents of the seller. Today, the agent working with the buyer typically represents the buyer. But, the seller most often pays the commission to the buyer's agent. This concept is difficult for many attorneys to understand.

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

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

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

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

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

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

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

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

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

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

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

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

Real Estate Assistants

The Department of Licensing created guidelines for agents that hire licensed and unlicensed assistants to help them manage their business. These are just guidelines but it is important to be aware if your assistant is actually performing duties that may require a real estate license.

Unlicensed Assistants **MAY**:

- Provide information about the characteristics of a listing or the terms of a transaction, as written and approved by a licensee.
- Pick up or deliver documents and keys (basically act as a courier).
- Follow up on loan commitments and pick up or deliver loan documents after a contract has been negotiated.
- Write and place advertising.
- Gather market analysis information.
- Perform normal clerical duties such as typing, scheduling appointments, etc.
- Transport people to properties and surrounding areas of interest. While performing this duty, they may only provide answers that are on preprinted material prepared by a real estate licensee.
- Obtain any public information from government offices, utility companies, title companies, etc.
- Make keys, install boxes, and place signs on the property.
- Greet people at an open house, distribute preprinted media material, and help provide security.
- Submit forms and changes to a multiple listing association.
- Check on the progress of loans, credit reports, etc.
- Receive rent payments and compute commission checks.
- Record and deposit earnest money and security deposits.
- Order or perform repair or maintenance.
- Conduct telemarketing or phone canvassing to schedule appointments to seek clients, **provided**:
 - Compensation isn't conditioned upon receipt of compensation by the licensee or firm.
 - They don't provide any other brokerage services.

Unlicensed Assistants **MAY NOT**

- Show properties, answer questions, or interpret information about the property, price, or condition.
- Interpret information about listings, titles, financing, contracts, closing, or other information relating to a transaction.
- Fill in legal forms or negotiate price or terms.
- Hold or disburse trust funds.
- Perform any act with the intent to circumvent, or which results in the circumvention of, real estate [licensing laws](#)

Limiting Brokers Liability and Eliminating Imputed Knowledge

Elimination of Vicarious Liability

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

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

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

Elimination of Imputed Knowledge

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

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

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

Interpretation

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

Enforcement

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

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

Ethical Considerations

One of the most difficult aspects of the real estate transaction is managing the relationships, egos and personalities of the buyer, seller, lender and the other agents involved. The best way to make sure that there is not a lack of understanding or miscommunication is to make sure that there is a good line of communication between all the parties.

Though a listing agent may want his or her own offer accepted on a property, it is important to remember that there are ethics involved... and be clear as to who the agent is representing.

When in a transaction with a competitor, it is important to treat that person with respect even though they may not be doing the job as thoroughly or ethically as you would have liked.

Review

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

It is important to know that there are no lawsuits currently in Washington State that have tested this law or where the courts have interpreted this law. This Law of Agency has been interpreted many different ways by attorneys, brokers, and the Dept. of Licensing. There are many unanswered questions regarding the interpretation of the law and what certain provisions mean in practice.

Remember to contact your designated broker if there are any questions you may have regarding the Law of Agency.

There will be changes to the Agency Law in January 2024.

Washington State Law of Agency R.C.W 18.86

RCW 18.86.010 Definitions.

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

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

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

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

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

[2013 c 58 § 1; 1996 c 179 § 1.] **RCW 18.86.020 Agency relationship.**

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

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

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

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

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

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

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

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

[1997 c 217 § 1; 1996 c 179 § 2.]

NOTES:

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

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

RCW 18.86.030 Duties of broker.

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

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- (e) To account in a timely manner for all money and property received from or on behalf of either party;
- (f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW [18.86.120](#) to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW [18.86.020](#)(1)(e), [18.86.040](#)(1)(e), [18.86.050](#)(1)(e), or [18.86.060](#)(2) (e) or (f), whichever occurs earliest; and
- (g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

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

[1996 c 179 § 3.]

RCW 18.86.031 Violation of licensing law.

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

[1996 c 179 § 14.]

RCW 18.86.040 Seller's agent--Duties.

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

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

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

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

[1997 c 217 § 2; 1996 c 179 § 4.]

NOTES:

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

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

RCW 18.86.050 Buyer's agent -- Duties.

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

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

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

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

[1997 c 217 § 3; 1996 c 179 § 5.]

NOTES:

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

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

RCW 18.86.060 Dual agent -- Duties.

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

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

- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
- (b) To timely disclose to both parties any conflicts of interest;
- (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
- (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
- (e) Unless otherwise agreed to in writing after the dual agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and
- (f) Unless otherwise agreed to in writing after the dual agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

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

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

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

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

[1997 c 217 § 4; 1996 c 179 § 6.]

NOTES:

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

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

RCW 18.86.070 Duration of agency relationship.

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

- (a) Completion of performance by the licensee;
- (b) Expiration of the term agreed upon by the parties;
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

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

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information.

[1997 c 217 § 5; 1996 c 179 § 7.]

NOTES:

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

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

RCW 18.86.080 Compensation.

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

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

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

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

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

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

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

[1997 c 217 § 6; 1996 c 179 § 8.]

NOTES:

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

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

RCW 18.86.090 Vicarious liability.

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

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

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

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

[1996 c 179 § 9.]

RCW 18.86.100 Imputed knowledge and notice.

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

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

[1996 c 179 § 10.]

RCW 18.86.110 Application.

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

[1996 c 179 § 11.]

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

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

The Law of Real Estate Agency

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

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

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

Sec. 2. Relationships between Brokers and the Public. Prescribes that a broker who works with a buyer or tenant represents that buyer or tenant -- unless the broker is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also prescribes that in a transaction involving two different brokers licensed to the same real estate firm, the firm's designated broker and any managing broker responsible for the supervision of both brokers, are dual agents and each broker solely represents his or her client -- unless the parties agree in writing that both brokers are dual agents.

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

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

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

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

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

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

Sec. 9. Vicarious Liability. Eliminates the liability of a party for the conduct of the party's agent or subagent, unless the principal participated in or benefited from the conduct or the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent.

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

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

[1997 c 217 § 7; 1996 c 179 § 13.]

NOTES:

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

Effective date -- 1997 c 217 § 7: "Section 7 of this act takes effect January 1, 1998." [1997 c 217 § 10.]

RCW 18.86.900 Effective date -- 1996 c 179.

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

[1996 c 179 § 12.]

RCW 18.86.901 Captions not law -- 1996 c 179.

Captions used in this chapter do not constitute any part of the law.

[1996 c 179 § 15.]

RCW 18.86.902 Effective date -- 1996 c 179.

This act shall take effect January 1, 1997.

[1996 c 179 § 19.]

Section 2 Real Estate Law of Agency Quiz

Section 1 What is an Agent?

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

Section 2 Who do you represent and when?

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

Section 3 Duties of a Broker

26. T/F ___ *A buyer can waive the real estate agents duty of honesty and good faith.*

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

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

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

Section 5 Compensation and Broker Liability

46. T/F___ *The broker's compensation can only be paid by the seller at closing.*
47. T/F___ *The party being represented by the agent is always the party paying commission.*
48. T/F___ *If the buyer is paying the commission, it can be paid directly to the agent instead of the broker.*
49. T/F___ *A buyer's agent can pay a referral fee to another real estate agent through his broker.*
50. T/F___ *Compensation to the agent and broker can be kept confidential.*
51. T/F___ *An agreement authorizing a broker to sell real estate for compensation is unenforceable if it is not in writing and signed.*
52. T/F___ *The Law of Agency obligates a real estate agent to show a buyer properties that are for sale by owner.*
53. T/F___ *Under "vicarious liability" in the Law of Agency, the principal may not be liable for the errors of the agent.*
54. T/F___ *The Washington State Department of Licensing retains jurisdiction only over violations of the general duties of a licensee in Section 3 of the Law of Agency.*
55. T/F___ *It is imperative that licensees contact the designated broker if they have any questions about the Law of Agency.*

Section 3

Contract Law

This section on Contract Law is an overview of basic contract law, as well as, the contract law issues that all real estate agents face. . Every real estate transaction begins and ends with a contract prepared by real estate agents that is meant to be a meeting of the minds of all parties.

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

Section 3 Objectives

As a result of taking this section of the Washington Real Estate Law class the agent shall be able to:

- Know the definition of a contract
- Be aware of what constitutes a legal contract
- Understand terminating and modifying a contract
- Be able to know when a breach of contract occurs and the remedies
- Know offer and acceptance, multiple offers and fraud
- Know about listing agreements
- Understand Purchase and Sales agreements including notices, contingencies, addendums and inspections

Contract Definition

Real estate agents daily write and negotiate contracts. It is important to understand basic contract law as it applies to the practice of real estate. A real estate agent should not advise a client during the negotiation or after a contract is executed as to the clients legal rights under the contract. If there is any question it must be referred to the designated broker.

A real estate contract is a contract for the purchase/sale, exchange, lease, or other conveyance of real estate between parties. In its most basic issues to be enforceable the real estate contract must:

- **Identify the parties:** The full name of the parties must be on the contract. In a sales contract, the parties are the seller(s) and buyer(s) of the real estate. If there are any real estate agents brokering the sale, they are typically listed also as the real estate brokers/agents who would earn the commission from the sale.
- **Identify the real estate (property):** The full legal description, in order to be enforceable, must be on the contract.
- **Identify the purchase price:** The amount of the sales price or a reasonably ascertainable figure must be on the contract.
- **Include signatures:** A real estate contract must be entered into voluntarily (not by force), and must be signed by the parties, to be enforceable.
- **Have a legal purpose:** The contract is void if it calls for illegal action.
- **Involve Competent parties:** Mentally impaired, drugged persons, etc. cannot enter into a contract. Contracts in which at least one of the parties is a minor are voidable by the minor.
- **Reflect a meeting of the minds:** Each side must be clear and agree as to the essential details, rights, and obligations of the contract.
- **Include Consideration:** Consideration is something of value bargained for in exchange of the real estate. Money is the most common form of consideration, but other consideration of value, such as other property in exchange, or a promise to perform (i.e. a promise to pay) is also satisfactory. A real estate purchase and sale is a promise for a promise. Earnest money is not required as consideration.

Contract Considerations

Express (parties have agreed) vs. Implied (inferred by conduct)	Unilateral (one promise) vs. Bilateral (two promises)	Executory (not fully performed) vs. Executed (fully performed)
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An express contract is one that has been expressed in words. It can be spoken or written.

An implied contract has not been put in words and is implied by the actions of the parties.

A Unilateral contract includes one promise whereas a bilateral contract is where both parties have made promises. A real estate purchase is a bilateral contract where the buyer agrees to pay and the seller agrees to sell.

An executory contract has not been fully performed. An Executed contract is one where all parties have fulfilled their obligations. A contract is “executory” when it commences and “executed” when it is finalized.

Ingredients for a Valid Contract

Capacity	Mutual Consent	Consideration	Meet Lawful Purpose	Statute of Frauds
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Capacity

To enter into a valid contract, a person must be at least 18 years old and be legally competent. This protects those who may not be able to fully understand the terms of the agreement. If a minor, for example, enters into a contract, only the minor can void the contract. If a minor has been emancipated then the contract is valid.

What if a buyer signs a contract but is consuming alcohol?

What if a seller signs a listing but appears to be quite elderly and have dementia symptoms?

Mutual consent

All the parties to the contract must consent to its terms. It is achieved through offer and acceptance. The acceptance must not vary the offer's terms or it creates a counteroffer. Mutual agreement occurs when there is constructive delivery which includes delivery after a final signature agreeing to all terms is delivered to the other party, the other party's broker, the other party's agent or the office of the other party.

When is a contract accepted? What about minor changes? What if only one spouse signs?

Consideration

The parties must exchange something of value. The consideration can be in the form of money or a promise. In the case of a purchase and sale agreement, it is a promise for a promise. A buyer promises to pay the seller money. The seller promises to transfer title and sell the property to the buyer. When they exchange promises they create an executory contract.

An earnest money amount is **NOT** required for a valid agreement. The real estate agent, no matter what is written on the agreement, does not make the decision in the case of a dispute over an earnest money if the sale fails. The dispute goes to interpleading in the courts.

What if the buyer's agent does not bring a check for earnest money when the offer is presented? Is it a legal contract.. yes!

Lawful purpose

The purpose of the contract must be lawful at the time it is made. In other words, if a contract is fraudulent it is not valid. Any contract that contains provisions that are not legal or a contract without written provisions that are key to the transaction may not be valid. Check to see if the seller is owner of the property as recorded on the last deed. The "seller" could be the tenant!

What if there is fraud involved? What if the parties are not who they say they are?

Statute of frauds

This refers to the provisions of the Washington State Code that requires real estate contracts to be in writing and be signed. This is to prevent fraudulent claims and to ensure that the agreement between the parties is clearly expressed.

The statute of frauds applies to any agreement that is for the purchase or sale of real estate. It also applies to any agreement that authorizes an agent to sell or purchase real estate for compensation or a commission. Listing agreements must be in writing in order to enforce the payment of a commission, for example.

It does not apply to a commission splitting agreement between two brokerages. An oral referral to a cooperating agent is a valid contract.

The statute of frauds does not require any specific contract or formal document. It can be a note that is clearly written and signed.

But, there are times in real estate sales where agents get agreements from clients over the phone. What is the problem with these verbal agreements? They can range from closing date to a verbal counter offer.

Legal Status of Contracts

Valid	Void	Voidable	Unenforceable
Binding and enforceable	No legal contract exists	Can be voided by one party	Parties can complete but it is unenforceable

A valid contract is one that meets all the legal requirements for a contract. The contract is binding and enforceable.

A contract that is void does not meet one or more of the requirements for a contract. It is essentially not a contract. It cannot be enforceable in court. If both parties fulfill their obligations under the contract it can be executed. But a void contract is no contract in the eyes of the courts.

A voidable contract is one that one of the parties can disaffirm or void the contract. Only the injured party can choose whether or not to go through with the contract. So the contract is executory until and only if the injured party decides to disaffirm the contract.

An unenforceable contract happens when all the requirements for a contract are met but there isn't evidence to prove something in a court, it is poorly worded, or the contract is for some unlawful purpose.

*If Grandma is senile and does not have mental capacity and enters into a contract, can the other party disaffirm or void the contract?
If a contract is written to create a fraudulent transaction, is it still valid? Is it void?*

(Remember... any questions regarding a contract you write as to whether it is void or voidable must be referred to your designated broker!)

Terminating and Modifying a Contract

Full Performance Contract is executed	Agreement Between the Parties Parties both agree	Assignment Transfer of rights or duties to third party	Novation Substitution of a new contract	Accord and Satisfaction A new agreement between parties	Release
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A contract is terminated in a number of ways. If a contract is executed and there is full performance by all parties, the contract is terminated.

Both parties can agree to terminate the contract. There may be remedies for one or all parties.

When a contract is assigned and the rights are transferred to another party, who then is obliged under the contract. This right can be limited by the contract itself with a term that specifies that one party cannot assign it without the other parties consent. The assignor is not relieved of all liability under the contract. If the person that the contract was assigned to does not complete his obligations, the assignor can be considered liable.

When there is a substitution of another contract, this is called a novation. When a contract is changed so that it is essentially a new contract it substitutes one contract for another. It could change the parties or the actual terms of the agreement.

If both parties agree to something other than what the contract was written for it is called accord and satisfaction.

If one party grants the other party a release from the terms of the contract the obligation can be eliminated. If the contract was required to be in writing according to the statute of frauds, then the release must also be in writing.

Remedies for Breach of Contract

Rescission	Liquidated Damages	Actual Damages	Specific Performance
<i>Parties put back in original position</i>	Damages agreed to in the contract	The amount of money actually lost	Court forces party to complete the agreement

If one party fails to perform or breaches the contract, the other is not required to carry out his part of the agreement.

One party breaches a contract by not fulfilling their end of the agreement. The other party can use the courts to deal with the damages incurred. Dispute resolution occurs in arbitration or the court system. Many contracts have clauses that spell out the process in arbitration. If one party sues the other and it is filed in the court, there are time limits.

In Washington, a lawsuit based on a written contract must be filed within six years after the breach occurred. An action based on an oral contract generally has a 3 year limitation.

When there is a breach, there are four basic remedies.

- Rescission is where both parties are put back in the original position and there are no claimed losses. They both walk away. Both agree it is a dead deal and the house goes back on the market and the buyer moves on, for example.
- Liquidated damages are those agreed to in the contract. An example might be an agreement that specifies a certain dollar amount should one party breach the contract. The earnest money could be the liquidated damages, for example.
- Actual damages are those when a contract is breached and one party incurs damages as a result, that party may claim that amount of money lost. There might have been a cost that incurred that might have to be covered, for example.
- Specific performance when a court can sometimes force a party to complete the agreement called for in the contract. A court might force the builder to sell to the buyer even though it might sell to another one for more, for example.

An agent should never determine, consult, or give any advice or prediction about damages if a contract is breached!

Offer and Acceptance of a Contract

In order for a contract to be binding, all parties must consent to the terms. The consent must be a meeting of the minds and be mutual. This is referred to as offer and acceptance.

Offer

The process of executing a contract begins when one person makes an offer. The offer must:

- Express a serious objective intent to contract, and
- Have definite terms.

The offer is not legally binding until it is accepted by the offeree. It can be accepted any time before it terminates. For example, when a real estate agent presents an offer, the seller is not bound by the offer until there is mutual agreement. The seller can agree any time before the offer terminates.

The offer terminates in one of the following ways:

Lapse of time. Most offers have an expiration date. It can terminate prior to that date because of other reasons.

A seller may delay the acceptance of a sale hoping for a better offer. The first offer is terminated at the expiration date and any agreement between the parties would have to become a new offer.

Revocation. If the offeror revokes the offer prior to its acceptance, the offer is terminated.

A buyer might find a better house and decide to revoke the offer on the blue house. As long as the seller has not signed the original offer with no changes, the offer terminates.

Rejection. If the offeree rejects the offer then the offer terminates.

A seller may accept another offer and reject the first offer. At that time the first offer is terminated.

Death or incapacity. If one of the parties dies or is not competent prior to acceptance, the offer is terminated.

If the seller passes away while the house is on the market and offers are submitted, any offer is terminated. The buyer is not obligated if it has not been accepted.

Acceptance

When an offer is accepted, a contract is formed. There are four basic requirements for acceptance.

The acceptance must:

- Be accepted only by the offeree
Only the Buyer can accept the offer that the buyer signed. No one else can accept for a buyer.
- Be communicated to the offeror
When the seller signs an offer, the acceptance must be communicated to the buyer.
- Be made in the manner specified
Only a signed written acceptance is evidence. The seller would have to sign the offer.
- Not vary the terms of the offer.
Once the terms are changed, it becomes a new offer and there must be mutual acceptance.

Acceptance of an offer must be considered mutual acceptance and be communicated to the offeror. If a seller accepts a buyers offer on a property by signing the purchase and sale agreement as written within the time frame but does not communicate that acceptance to the buyer, it can still be revoked by the buyer.

Counteroffers occur when there are changes to the original offer. When a party makes a change, it effectively terminates the old contract and becomes a new contract. Once that occurs, the seller, for example cannot go back and accept the previous offer from a buyer because the original one has been terminated when the seller made a counteroffer. Each counteroffer terminates the previous offer and becomes a new offer subject to the legal requirements for acceptance.

Multiple offers

If another offer is presented, it is imperative that if the seller signs the second offer, that is is “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.

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. Another example would be choosing the “perfect” family over another gay buyer. Offers must be chosen based on the offer.... NOT the people according to Federal Laws.
- 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 choose an offer and sign for mutual acceptance before other offers are presented. For example, the listing agent might publish a date in the listing that says, “all offers to be reviewed on Tuesday.” If an offer comes in with an expiration date of Sunday, the seller can review the offer and sign it ... selling the property.

When representing a buyer in a multiple offer situation it is important to structure the offer so that the buyers have their “best foot forward.”

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.

There is no law or rule that requires a listing agent or seller to notify a buyer that their offer was not accepted. It is a best practice to make sure that the buyer and or their agent is notified. It is a law that all offers must be presented, so it is important to make sure that they know it was presented and not accepted in a timely manner.

Consent Must be Freely Given

In order for a contract to be binding, there must be consent freely given. Consent must not be as a result of:

Fraud

A victim of fraud would have to have entered into the contract using false information. Fraud can be actual, for example, when a seller does not disclose truthfully about a defect in the property. Or, fraud can be constructive when there may be errors in disclosure that were not intentional.

Fraud in the inducement occurs when a party understands what is being signed but the party is being defrauded signing something that is not what was expected.

A seller might be pressured to sign an agreement to sell her house for much lower than the actual market value. The seller is aware that it is a contract to sell the house, but the buyer has had her rely on a fraudulent appraisal.

Fraud in the execution occurs when the party does not know what is being signed or that there is a contract.

A seller might think that the papers being signed are to refinance the house, when in fact, there is a quit claim deed included in the documents.

Undue Influence

Taking advantage of someone because of some affinity relationship can cause undue influence. Someone that is easily coerced because of age, drugs, or financial desperation could be pressured into signing contracts that are fraudulent. Often there is a sense of urgency to sign immediately. The contract is voidable by the injured party.

A homeowner might be facing foreclosure and sign multiple contracts because of pressure from a foreclosure rescue person.

A senior who is pressured to sign documents by an elder in the church that give him control over her property.

Duress

Duress occurs when someone is threatened to sign contracts that they would not otherwise sign. They might be threatened with harm or public humiliation, for example, so they sign the contract. The contract would be voidable.

Mistake

Mutual mistake does not usually involve any bad faith. If both parties are mistaken about some fact in the contract, either of them may disaffirm the contract.

Real Estate Listing Agreements

Real estate agents use listing agreements to spell out the services that the agent will perform in exchange for payment of commission. In order for an agent to sue for commission, the agreement must be in writing and signed according to the statute of frauds. A listing agreement is basically an employment contract between the real estate firm and the seller. The real estate agent executes the contract on behalf of the firm. The real estate agent typically has a contract with the firm for the payment of commissions.

Most real estate agents in Washington State use preprinted forms provided by a local MLS. The most common contract is an exclusive right to sell. This agreement states that the owner will list with one broker exclusively and owes commission to the firm regardless who sells it during the term of the listing.

An exclusive agency agreement gives the seller the right to sell the property without paying the listing company commission. This is not common and some MLS do not offer that.

An open listings is often not a listing at all. The owner just tells the agent that she will pay commission if the agent finds a buyer. Often this is not in writing and not enforceable.

The most common elements in a listing agreement include:

The property description.	The listing should include the full legal description because a street address does not include the easements and size of the property being sold.
Sales price and terms.	The agreement lists the price and terms the seller agrees to pay commission if a buyer is accepted.
Agency disclosures.	The listing form defines the agency relationship should the firm or listing broker sell the property.
Access to the property.	The lock box and authorizations.
Multiple listing.	The firm and the obligations and responsibilities with the MLS
Marketing.	The firm has the right to market the property.
Hold Harmless.	The seller is required (unless exempt) to provide a disclosure statement and the firm is not liable for claims regarding the disclosure.
Firm Damages.	Should the seller receive compensation from a buyers breach, the seller is to pay damages, if any. To the listing firm.
Commission.	The listing agreement states the terms when the seller owes commission including extender clause.

Real Estate Purchase and Sale Agreements

When a buyer offers to purchase property, the contract is commonly referred to as a purchase and sale agreement. Contracts can be legally binding once signed. The decision to purchase real estate is one of the most major ones in our lives. As agents, we are used to dealing with contracts and we often forget the pressure on the purchasers when they sign the bottom line or “approve the paperwork.”

The first time your purchasers see and read the purchase and sale agreement should not be the moment you have been waiting for when they make the offer! Pull out the contracts and discuss them at the first meeting you have with the purchasers. If you make the assumption that the purchasers understand the agreement because they purchased in the past, you may be making a mistake. Think about how many changes the contracts have gone through in the last year. It is hard for even real estate agents to keep up with the all the changes.

Ten Critical elements on a Purchase and Sale Agreement

1. The complete names and how they will take title. Make sure there is no question as to whether they are competent. You do not need to ask about their marital status. You should ask, “How do you take title?” If they are unsure, let that be handled in escrow.
2. The complete legal description. If it is attached at the time of signing it does not necessarily have to be initialed because that is not always possible in the case of bank sales, for example. The contract must have a FULL legal description to be valid! An address might show where the mail is delivered. The number on the front door might help the fire department. But, the legal description includes the size and easements that describe what the purchaser is buying.
3. The amount of earnest money should be detailed. A clear date should be specified if it is not to be deposited upon acceptance. Earnest money is NOT required for a valid agreement.
4. The purchase price must be clear and concise. If it includes any terms they must be specified.
5. The size of the down payment and how the remainder of the purchase will be financed. The financing contingency must include dates and terms. If the sale is seller financed, the forms must be attached.
6. Any items of personal property to be included. Appliances or furniture, for example, must be added to the contract under included items.
7. The agency disclosure. The agency disclosure clause must be a part to the contract. The listing agent states which parties she is representing in the transaction. When there is a selling agent, he also must indicate the party represented.
8. The dates for closing, contingencies and notices and the terms required to fulfill obligations. There may be a number of inspections required as part of the contract including structural, pest or septic. The terms and dates must be clear.
9. The length of time the offer is valid. The offer is valid until it expires or is revoked.
10. The signature of all buyers and initials on all changes on the contract.

Notices

Throughout a real estate transaction there are requirements for one party to give notice to another party that condition has been met or waived. Performance or further agreement is based on new information.

Examples of notices that are commonly given from one party to another include:

- Removal of contingency for sale of home
- Inspections
- Review of Resale Certificate
- Review of property disclosure form
- Financing contingency
- Revocation or offer or counteroffers

All notices required or permitted in, or related to, the Purchase and Sale Agreement must be in writing unless specified otherwise. If notice is not given, the the contract may be terminated. There must be a consequence if notice is not given in a timely manner.

The purchase and sale agreement states the notice can be signed by at least one party in the case of a husband and wife. Experience has shown many agents that it is best to get both signatures to be on the safe side.

An agent writes, "This is NOTICE that the closing date shall be extended one week to June 7th. This is a change to the terms of a contract and not a notice. A notice includes terms that are already agreed upon. A notice is like a fork in a road. The parties know that they are traveling down a certain road and at a certain time due to some certain event, one party will choose one of the forks in the road. When they make the choice they give "notice" to the other party

Receipt of Notices

Receipt of notices to the buyer can be by the selling licensee or the licensed office of the selling licensee or by the seller by the listing agent or the licensed office of the listing agent. According to the Purchase and Sale Agreement, receipt by the Selling licensee of a Real Property Disclosure Statement, Public Offering Statement and/or Resale Certificate shall be deemed receipt by the buyer. The Selling Licensee and Listing Agent have no responsibility to advise of a receipt of a notice beyond either phoning the party or causing a copy of the notice to be delivered to the party's address shown on this agreement. Buyer and seller must keep agents advised of their whereabouts in order to receive prompt notification of a receipt of a notice.

It is recommended when writing a contract whereby a party has to complete some performance it is usually recommended that action be required instead of action to terminate the contract.

Contingencies

Contracts often include one or more conditions or contingency clauses. It makes the promisor's obligation depend on the occurrence of a particular issue. If that is not to their standards according to what is written in the contract, the promisor can withdraw without liability for breaching the contract. When there is a contingency, the promisor must make a good faith effort to fulfill the requirements. It cannot be used as an "out" clause to get out of the contract. A contingency can be waived by the party that it was intended to benefit with the consent of both parties.

Contingencies can be wide ranging. They can include but are not limited to:

- Structural inspection
- Financing
- Pest inspection
- Septic or well inspection
- Water quality test
- Environmental hazards such as Lead, asbestos, carbon monoxide
- Plumbing inspection
- Roof inspection
- Date funds available
- Sale of buyers home

Contingent on the sale of buyers home.

In some cases, the purchaser cannot complete the sale without the proceeds from the sale of another property. In these cases, the buyer often gives the seller information on the property. The seller will give the buyer a time frame to complete the sale.

Bump Clauses

When a sale is contingent on the sale of another property there is often a bump clause included in the contract. If the seller receives another offer during the contingency time period, the seller can demand that the buyer waive the condition or cancel the contract.

Addendums

The MLS had well over 100 forms to use to use to sell real estate.

The second you start filling out a blank addendum you COULD be in a situation where you are “practicing law.” The Heritage House case years ago gave us, as agents, the ability to fill out preprinted forms for a real estate purchase and sale.

“The licensee can complete simple printed standardized real estate forms, which forms must be approved by a lawyer. It is being understood that these forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker or salesperson and without charge for the service of completing the forms.”

But, once we start drafting our own forms or contracts we are doing the job of an attorney which is called “practicing law.”

There can so much ambiguity with the addendum itself or with the rest of the contract. It is difficult to find a blank addendum than an agent created that doesn't have some sort of “loophole” embedded in it.

There can be challenges writing addendum's that cover an issue as common as a buyers walk through. For example, these phrases are often used and are not well defined.

- Workmanlike manner
- Buyers satisfaction
- Prior to closing
- Buyer to have an inspection of the roof

The buyer or the seller may not agree on the meaning of a phrase as in this circumstance and a bit of wrestling can ensue!

Identify the risk when writing an addendum.

It is best to recommend action rather than inaction or terminating the contract. Spell out the action, the time frame, and the consequences if the action is taken or not approved.

Try to use the preprinted forms available from the NWMLS or your corporate forms. There are hundreds of forms created to address most of the issues we deal with when negotiating a transaction.

Inspections

Inspection addendums are the biggest opening to terminating a contract or causing the terms to possibly substantially change. Because the purchase of property is often the largest investment an individual will ever make in their life, the condition of the property is most important.

There are a number of inspections that a buyer can choose to have done on a property. They can include but are not limited to:

- Structural or home inspection
- Pest inspection
- Lead Paint
- Water quality
- Septic
- Well
- Asbestos
- Roof

It is important to use the forms provided by the MLS for inspections. When an agent writes up a blank addendum for an inspection there are too many unanswered questions and performance for the contingency is not clearly defined.

For Example, if an agent writes on a blank addendum the following:

“Inspection of plumbing and electrical systems, paid for by purchaser and inspection of heating system.”

There are a number of questions regarding the performance on the contingency.

What is the time frame to satisfy the inspection?

Who pays for the inspection of the heating system in view of the way the condition is expressed?

Inspection by whom? A qualified plumber, electrician, a general contractor, a city inspector?

Is it merely the fact of inspection which satisfies the condition?

Must the inspection disclose conditions which are satisfactory to this buyer or to a reasonable, objective buyer?

If the inspection discloses a minor defect which can be quickly remedied, does the seller have the option to so remedy?

If inspection discloses a major defect, can the seller remedy?

If inspection discloses a defect, can the buyer walk from the transaction and rescind the contract?

Must the corrected system also be inspected to the satisfaction of the buyer?

Washington State passed the Home Inspector Act. According to RCW 18.280 a Home Inspector must be licensed. If not licensed before 2009, a home inspector must complete a 120 hour Home Inspector course and have 40 hours of mentoring. Then the home inspector must pass the exam before applying for a license. Make sure that the home inspector your buyer has chosen has a license.

An inspector who is going to inspect for or remove lead based paint must either pass the Renovator's Lead-Based Paint Training Course or a Safe Work Practices Training Course approved by HUD.

Section 3 Contract Law

Quiz

1. T / F In order for a real estate contract for the sale of property to be enforceable there must be an address.
2. T / F Consideration in the form of Earnest Money is required for a written contract for the sale of property.
3. T / F A contract must reflect a meeting of the minds.
4. T / F An express contract must be written.
5. T / F An implied contract is created by the actions of the parties.
6. A real estate contract is **unilateral / bilateral** (choose one)
7. T / F When writing and negotiating a purchase and sale agreement the contract is considered an executory contract.
8. The age that a person must be to enter into a valid contract _____
9. Mutual consent is achieved through _____ and _____.
10. Consideration can be in the form of money or a _____.
11. Earnest money **is / is not** (choose one) required for a valid real estate purchase and sales agreement.
12. All real estate contracts must be in writing according to the _____ of _____.
13. If a contract is missing a requirement to be valid then it is essentially not a contract and is _____.
14. If a minor enters into a contract can the other party say the contract is voidable and void it? Yes or No (choose one)
15. Full performance of a contract occurs when the contract is _____.
16. T / F When a contract is executed and there is full performance the contract is terminated.
17. When there is substitution of another contract this is called a _____.
18. If one party fails to perform or breaches the contract the other **is / is not** (choose one) required to carry out his part of the agreement.
19. When a court forces a party to complete the agreement in a contract this is called _____.
20. The process of executing a contract begins when one person makes an _____.
21. T / F An offer terminates when one of the parties passes away prior to acceptance.
22. T / F If the offeree rejects the offer the offer is terminated.
23. T / F In order for an offer to be accepted it must be communicated to the offeror.
24. T / F Once the terms are changed the offer becomes a new offer.
25. T / F The seller cannot choose an offer over another because of the number of children or the race of the buyers.
26. In order for a contract to be binding consent must be _____ given and free from fraud.
27. T / F An open listing is often not a listing at all.
28. The most common listing accepted by the MLS is called _____ to sell.
29. T / F If the legal description is not available at the time of execution, a property address is sufficient for a valid contract.
30. T / F The buyers do not have to disclose their marital status. How they take title is important in escrow.
31. T / F Only one spouse has to sign a purchase and sale agreement if the marital couple is purchasing the property.
32. T / F Extending the date of closing is just a notice.

33. Example of three contingencies _____ .
34. If a contingency **can / cannot** (choose one) be waived with the consent of both parties.
35. When a sale is contingent on the sale of the buyers home there is often a _____ clause in the contract.
36. When an agent starts to fill out a blank addendum the agent could be considered _____ law.
37. A sale of a property could be contingent on a number of inspections including _____ .
38. T / F An agent should not advise a seller about their rights to keep the earnest money if a buyer breaches a contract.
39. T / F If there is a question as to whether a contract is voidable, the agent must consult the designated broker.
40. T / F An agent cannot advise a buyer as to their rights under the contract.

Name the ten requirements for a Purchase and Sale agreement to be valid.

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Section 4

Current Legal Issues

This section is an overview of the most current legal issues in the real estate industry. There are changes happening constantly in all aspects of our business. This is an overview of the most current trends in the industry.

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

Section 4 Objectives

As a result of taking this section of the Washington Real Estate Law Class the agent shall be able to:

- Fair Housing and Anti Discrimination
- Carbon Monoxide law
- Landlord tenant legal issues
- Title Insurance Regulations
- Short Sales and Foreclosures
- Fraud in real estate transactions
- Property information disclosures

Fair Housing and Anti Discrimination

There are times when “disclosure” is against the laws. The Fair housing and anti discrimination laws do not protect “minorities.” They protect people that are discriminated because of certain reasons or “protected classes.” There are Federal, State and Local Fair Housing and Anti Discrimination Laws.

Federal Laws

Legislation on the Federal level to fight discrimination began with the Civil Rights Act of 1866, the Federal Fair Housing Act of 1968, the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

The Civil Rights act of 1866 applies to all property whether residential or commercial and only applies to discrimination based on race. It is a federal law and the injured party can bring a lawsuit in federal district court. There is no time limit for filing an action , but the lawsuit must be filed within the time limit for state law for similar claims.

In the 1970’s, various federal legislation was enacted to prohibit discrimination in federal programs, and to include additional protected classes. Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against handicapped persons. The U.S. Supreme Court rendered its decision in Jones v. Alfred H. Mayer Co., and held that the Civil Rights Act of 1866 banned private, as well as government, racial discrimination in housing. Thus the 1866 Act was given new life, and could be used to fight racial discrimination.

In 1974, the Fair Housing Act was expanded to include prohibition of gender discrimination. Section 8 programs were created. Later, Congress enacted the Age Discrimination Act of 1975, which prohibited discrimination on the basis of age in programs receiving federal financial assistance. In 1980, President Carter expanded Kennedy’s executive order to include gender-based discrimination, and to grant HUD additional authority to issue regulations to further fair housing in federal programs.

The 1988 Amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the act. The 1988 Amendment made major changes to Title VIII, including adding two protected classes to the Fair Housing Act: (1) families with children and (2) handicapped persons. The Amendment also modified the administrative process for HUD complaints, and essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act. The Amendment removed the cap on punitive damages and increased the available damages and civil penalties. The Amendment also extends Title VIII to other discriminatory practices, relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

The Federal Fair Housing act was passed in 1968. It created “protected classes.” “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”

The law prohibits discrimination based on protected classes for the sale or lease of residential property. It prohibits discrimination in advertising, lending, real estate brokerage, and certain other services in connection with residential transactions.

The protected classes are:

- Race
- Color
- Religion
- Sex including LGBTQ and others
- National Origin
- Familial Status
- Handicap/ disability

There are exemptions to the federal law but they apply very rarely. There is no exemption for any transaction involving a real estate licensee. The Washington law on discrimination is stricter and has no exemptions.

Washington State Law on Discrimination

In Washington State there is the Law against Discrimination. The law prohibits unfair discriminatory practices in real estate transactions including the sale lease, appraisal, brokering, exchange, lending and offering real estate brokerage services. The law covers all real estate transactions, not just residential housing as the Federal Law does.

The Washington Law on Discrimination prohibits a wide range of discriminatory practices in employment, insurance, and credit transactions, place of public accommodation and amusement (such as restaurants, movie theaters, hotels, beauty shops, and most other commercial businesses.”

The protected classes in Washington State include:

- Race and traits typically associated with race.
- Creed,
- Color,
- National origin,
- Sex
- Sexual orientation,
- Marital status,
- Familial Status,
- Sensory, physical or mental disability,
- Use of a trained guide or service dog,
- Honorably discharged veteran or military status.

Under the law, Aids and HIV are protected from discrimination in the same manner as those with any other mental or physical disability. In Washington State, though not in the discrimination law specifically, it is now legal for same sex marriages.

Unfair Real Estate Practices under Washington Law on Discrimination

Discrimination in real estate transactions, facilities, or services is prohibited whether acting for himself, herself, or another. It is unfair to:

- Refuse to engage in a real estate transaction with a person.
- Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.
- Refuse to receive or to fail to transmit a bona fide offer.
- Refuse to negotiate for a real estate transaction for a person.
- Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property.
- Discriminate in the sale or rental or make unavailable a dwelling to a person or a person associated with the person buying or renting because of a disability.
- Make, print, circulate, post or mail a statement, ad, or sign which indicates directly or indirectly to discriminate. To use a form of application or to make a record or inquiry in an attempt to discriminate in a real estate transaction.
- Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction.
- Expel a person from occupancy of real property.
- Discriminate in the course of negotiating, executing or financing a real estate transaction or services including title insurance.
- Discriminate in any credit transaction
- Induce or attempt to induce anyone for profit, anyone to sell or rent by making representations regarding entry into the neighborhood of a person of a particular protected class. This is called “blockbusting.”
- Insert into a written instrument relating to real property, or honor or attempt any condition or restriction or prohibition based on a protected class.

Seattle Anti Discrimination Laws

Illegal discrimination is when:

- You are treated differently from others in a similar situation; **and**
- You are harmed by the treatment; **and**
- You are treated this way because of your membership in a protected class (i.e., race, gender, etc.) or
- Your request for a reasonable accommodation due to a disability is refused without a valid business reason.

Seattle currently includes these protected classes:

Age **	Parental status *
Ancestry	Political ideology
Color	Race
Creed	Religion
Disability	Sex
Gender identity	Sexual orientation
Marital status	Use of a Section 8 certificate
National Origin	*
	Use of a service animal
	Veteran or Military status

*Not applicable to Employment or Fair Contracting cases

**Not applicable to Public Accommodations cases

Retaliation

It is against the law for someone to penalize or discriminate against you because:

- You file a discrimination complaint
- You cooperate with a discrimination complaint
- You cooperate with the enforcement of a discrimination complaint
- You comply with anti-discrimination laws

You can file a separate charge of discrimination if someone has retaliated against you. SOCR will conduct a separate investigation concerning retaliation.

Harassment

Seattle's anti-discrimination laws also protect you from harassment. Harassment is conduct that is directed at you because of your race, religion, gender, sexual orientation, disability, national origin, etc.

Harassment can include: Threats, Slurs or epithets, Threatening acts, Posting offensive materials on walls, bulletin boards, e-mail, etc.

To be considered harassment, conduct must:

Be serious and frequent enough to create a hostile environment and Interfere with your ability to work, live, or enjoy a public place.

If you have questions, comments or requests about our services please contact our office at (206) 684-4500 voice, (206) 684-4503 TTY.

Tacoma Fair Housing

The Tacoma Neighborhood & Community Services Department, Human Rights Division investigates and resolves complaints alleging discrimination in housing which violates the Law Against Discrimination, Chapter 1.29 of the Official code of the City of Tacoma, as amended, and the Federal Fair housing Act.

The Fair Housing Code, Chapter 1.29, as amended, prohibits unfair housing practices in the rental, sale, or financing of housing based on:

Race	Familial Status
Color	Disability
Sex	Ancestry
Religion	Sexual Orientation
Age	Gender Identity
National Origin	Veteran/Military Status
Marital Status	Familial Status

If your experience occurred within a year from the most recent date of alleged discrimination stop by or contact the Neighborhood & Community Services Department, 747 Market Street, Room 836, Tacoma, WA 98402 Phone: (253) 591-5151

Illegal Discrimination still Happens

Let's say you were driving down the street and your foot was heavy on the accelerator. You are cruising about 15 miles over the speed limit. You got stopped by an officer for breaking the law and received a ticket. What if you did not get stopped. You cruised home at a high rate of speed to catch the latest episode of your favorite TV show. Did you break the law if you weren't caught? You probably do speed occasionally.

Did a kid break the law for lifting a candy bar from the local grocery store? Do you steal things from the store because you don't want to pay for them? Most of us would never dream of doing that. It's just a minor crime.

When people discriminate, they break the law. We all have the right to live in our country free from discrimination. If you choose to discriminate, you are breaking the law even if you are not caught or sued or fined.

But, the difference between getting caught speeding or lifting a candy bar is that when you violate the Federal Fair housing Act, you violate a federal law. It is not just a minor criminal act? You could be committing a FEDERAL CRIME.

All the excuses in the world do not work when a person has been discriminated against. Every person IS a protected class... Everyone is race, color religion, sex, national origin, familial status... and possibly disabled! The laws were not written for "minorities."

These kinds of questions have sometimes been asked by the sellers. Regardless of who the agent represents, it is illegal to answer these questions or respond to these statements.

- Do the buyers have children?
- What is the race of your clients?
- Will the family go to the church next door?
- Is the buyer gay?
- Is your son have a mental disability?
- This is a family neighborhood. I don't think they would fit in.
- Is the buyer single?
- Are the buyers married? (marital status is protected. Escrow needs to know how they take title.)
- Are the buyers seniors?
- A married couple is more stable than a single woman. (major lawsuit on this statement)
- This is not a good neighborhood for children
- This would not be a good neighborhood for disabled children.

If the buyer chooses to live within a mile of a certain church or cultural center, that is the buyers choice. You can accommodate their choice but you cannot steer them to a certain neighborhood. You cannot tell them where others from their same religion or country live. They can choose the neighborhood based on their own research.

Often, people in condominiums and apartments want to discourage or eliminate children from the complex. A condominium board in Seattle was working on changing the rules to eliminate children because they didn't like that grandchildren were living in a unit. That cannot happen. In another case an offer wasn't accepted on a property because the daughter was disabled.

Love Letters from Buyer to Seller

Whether a poem, photo collage or a love letter, buyers are trying to "promote" their offers to the sellers. Especially as the real estate market heats up and buyers may be competing with other offers that may even be higher, writing a personal letter to appeal to the sellers 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 have nothing to do with the purchase and sale agreement. There are articles all over the internet, samples of letters, and even templates.

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. Home owners 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 man who will not have children, 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, etc 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. Real estate agents are bound by federal state and local discrimination laws and cannot discriminate.

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.

The REALTOR magazine in 2019 and in 2023 published articles about this issue. One was called "Love Letter or Liability?"

Single Woman Sues Real Estate Agent for Discrimination

In May of 2004 a young woman said she encountered discrimination when she tried to buy a house in Tacoma ... not because of her skin color, age, religion or ethnicity. She was discriminated because she is single. She made an offer on a lovely two story house in Tacoma. "It was my dream house. A house that I wanted to purchase to raise a family," she said. The asking price was \$196,000. She offered \$199,000 and was pre approved for the mortgage. The Agent said, "Your guys deal was a better one but they decided to go with the other deal just because it was a married couple and they felt they would be a little more stable.... They were a bit nervous about it being a single woman trying to buy the house and they were just concerned it would come down to financing and something could possible go wrong."

It was discriminatory. The Federal Fair Housing act clearly states that it is unlawful to discriminate based on sex and familial status. The case was settled with the real estate company prior any court hearing for over 6 figures.

The sellers of a house are liable under Federal, State and Local Fair Housing and anti discrimination laws. The buyers have the right to purchase property regardless what their background.

The Washington State Human Rights Commission was created to administer the law. It is to formulate policies and make recommendations to government agencies. It is composed of 5 members appointed by the Governor with the advice and consent of the Senate.

Not all cases go to the courts. People face discrimination every day. But, in the real estate industry, we have an obligation to uphold the laws to protect the rights for housing for all people.

Carbon Monoxide

Carbon Monoxide (CO) is an invisible, odorless and tasteless gas that is poisonous and can cause death, memory loss and brain injury. The Washington Poison Control center has received about 400 calls per year about CO poisoning. The December 2006 storm that hit Western Washington caused the largest storm related epidemic in history with regards to CO poisoning. Over 1000 people were seen in emergency rooms with symptoms. Eight people died from CO exposure. But, CO poisoning is not just connected with storms and power outages. It is also caused by cars left running in garages or when people ride in the backs of pickup trucks. Generators in garages and barbecues in small places can cause a buildup of Carbon Monoxide. Carbon monoxide can pass through walls from garages or neighboring apartments. Alarms can prevent this. State law already requires smoke detectors in homes. Detectors cost usually less than \$35 and go off at 35 ppm CO, the maximum exposure allowed by the Occupational Safety and Health administration. All combustion produces carbon monoxide. It is not detected by its smell. People can't know it's there until they are sick. Often people remain in the area where they are being exposed, thinking they have the flu and should rest. Carbon monoxide is toxic to humans. One of these is its interaction with red blood cells, which normally carry oxygen to tissues. Carbon monoxide binds to the red blood cells instead of oxygen and sickens people through oxygen deprivation. Those who don't die from CO poisoning can experience some permanent effects including memory loss and brain injury.

People that have been affected by death or injury encouraged the legislature to pass a law in April 2009 requiring CO alarms. The Carbon Monoxide Bill required that the State Building Code Council (SBBC) to adopt rules. They went into effect in 2012.

This language is in the law requires owner occupied residences have alarms. *“Any owner occupied single family residence that is SOLD on or after the effective date of this act (July 26, 2009), the seller must equip the residence with carbon monoxide alarms in accordance with the requirements of the state building code before the buyer or any other person may legally occupy the residence following such sale.” RCW 19.27.530 (1) b.*

NOTE! The rules passed by the Seattle Building Code Council require that all sellers have Carbon Monoxide alarms according to code prior to the buyers occupying the residence. The law and subsequent rules require alarms in all new construction also including any major remodel of a residential property. Owner occupied residences are exempt unless they are being sold.

Senate Bill 6472 changed the Property Information Disclosure form to add Carbon Monoxide alarms. In addition, it exempts real estate agents from liability if the seller does not comply with the law. .

The building code (WAC 51-51-0315) requires that an alarm be installed outside of each separate sleeping area in the immediate vicinity of each bedroom and on each level of the dwelling. The alarm must be in accordance with the manufacturer's recommendations and that it comply with UL2034. There are no exceptions for properties that do not have fuel fired appliances or an attached garage. The alarms may be battery operated. If there is a tenancy, the tenant is responsible for the battery replacement.

Landlord Tenant Act Changes (RCW 59.18)

As of July 22, 2011, a number of sections of the Washington state residential landlord tenant act have changed.

This is a short summary of these changes.

The landlord must notify the tenant if there is a change in address for the landlord in writing either a delivered personally or be mailed to the tenant and conspicuously posted. If the landlord lives outside the state there must be a person within the county authorized to act as an agent. If the owner resides outside side and violates a provision of the law, the owner is deemed to have submitted themselves to the jurisdiction of the courts of this state and may require the owner to appear and answer within 60 days after being served. A landlord is required to provide a receipt for any payments made by tenant in form of cash.

The landlord shall not abuse the right of access and shall provide written notice before entry. The notice must state the exact time and date of entry or specified period of time. The notice must specify the earliest and latest possible time of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry.

A portion of the fee or deposit may not be withheld if the dwelling unit fails a tenant-based rental assistance program inspection by a qualified inspector.

The tenant has the right to request one free replacement copy of the written move and move out checklist. If the landlord collects the deposit without providing a written checklist at the commencement of the tenancy the landlord is liable to the tenant for the amount of the deposit. If the tenants dwelling unit is foreclosed upon and attendance deposit is not transferred to the successor after the foreclosure sale or other transfer of the property from the foreclosed upon owner to her successor, the foreclosed upon owner shall promptly refunded the full deposit to the tenant immediately after the foreclosure sale or transfer. If the foreclosed upon owner does not refund the deposit or transfer it to the successor, the foreclosed upon owner is liable to the tenant for damages up to two times the amount of the deposit. In any action brought by the tenant to recover the deposit, the prevailing party is entitled to recover the cost of the suit or arbitration including attorney fees.

There have been considerable updates to the Landlord Tenant Act over the past 4 years.

Title Insurance Regulations

It is common for title insurance companies to develop working relationships with real estate licensees to build their title insurance business. In addition, many real estate companies that have had an ownership or financial interest or an affiliation with a title company and encourage real estate licensees in that firm to work with that specific company. There are some licensees and real estate firms that accepted gifts and promotions in return for sending title business. Over the past couple years the Washington State Legislature, the Office of the Insurance Commissioner and the Department of Licensing have created laws and regulations on this practice so to ensure that the homebuyers who pay for the title insurance receive unbiased recommendations.

The Office of the Washington State Insurance Commissioner passed new regulations in March 2009 WAC 284-29 that affect title insurance companies went into effect. These rules regulate the title insurance companies as to what constitutes an appropriate gift and to set specific monetary limitations for spending that affects real estate companies. It restricts the insurers to spending a maximum of \$1000 per trade organization event each calendar year.

Title insurers may also continue to pay to advertise at trade events as long as they pay the standard price and advertising is not offered exclusively to one company. Title insurers may give self-promotional items directly to real estate licensees as long as the individual item costs no more than \$5.

Title insurers can host complementary education session for licensees on title related topics and spend up to \$10 per hour on refreshments. Educational session may be provided on non title topics if they are open to the public and provided for a fee. Charitable and PAC donations are unrestricted when provided directly to the organization independent of any referral.

The Washington State Legislature and the Department of Licensing regulate the relationship that real estate agents have with title insurance companies. Under RCW 18.85.053 the law says that if a real estate broker or a person who has a controlling interest in a real estate business (a firm, owner or designated broker) shall not directly or indirectly, give any fee, kickback, payment or other thing of value to any other real estate licensee as an inducement, reward for placing title insurance business, referring title insurance business, or causing title insurance business to be given to a title insurance company or rep where the licensee or the person having controlling interest in a real estate business also have a financial interest. An example would include owners of real estate firms that also have a finance interest in a title insurance company cannot give inducements to their agents to use that title insurance company.

In addition, a real estate broker or person who has a controlling interest in a real estate business shall not solicit or accept, or both, anything of value from a title insurance company or representative anything that a title insurance company is not permitted by law or rule to give the real estate broker or person with a controlling interest in a real estate business.

Real estate licensees, firms and designated broker are not allowed to prevent or deter a title insurance company or representatives from delivering to a broker or clients printed promotional material on title insurance services. The material must be appropriate, not misleading or false, does not malign licensees or affiliates, the delivery is to public access of the office, and the conduct of the title representative is appropriate.

A real estate broker shall not require a consumer as a condition of providing real estate services to obtain title insurance from a title insurance agent in which the real estate licensee has a financial interest.

A title insurance company cannot pay for your advertising or give you gifts above their limits.

Short Sales and Foreclosures

After the real estate market crashed and died in 2007, there were so many short sales and foreclosed properties. Though this is not a current issue, it could arise again in the future.

Short sales, distressed properties, and foreclosures are surrounded by complicated issues. If a homeowner is delinquent on payments, has lost income due to loss of job, or is in a financial bind their home might be in jeopardy. Often, the real estate agent is called in first to determine the approximate market value. Then the agent is often asked to help the homeowner look at their options. But, there can be complications that the real estate licensee is not aware of, implications that might affect a homeowner after a sale, and other liens that have not been disclosed.

In desperation, some of these homeowners are turning to businesses and individuals that claim to repurchase mortgages in order to allow the homeowners to remain in their homes. Most of these are the result of scams. The Distressed Property Act of 2008 RCW 61.34 was passed in 2008 to focus on regulating the activities of home consultants who claim to help stop a foreclosure for a fee often called foreclosure rescue. The act also provided legal rights to home sellers through distressed property protections and distressed home consultant provisions. Providers of loan modification services to Washington State residents involving their Washington property must be licensed under the Mortgage Broker Practices Act RCW 19.146 or the Consumer Loan Act RCW 31.04 unless explicitly exempt under those acts. In July 2011 the Foreclosure Fairness Act was passed that also gives the homeowner who is in a distressed situation behind on their mortgage some more time to get counseling.

The Washington State Department of Licensing wants real estate licensees to be aware that all licensees are not equipped with the proper training and experience to handle distressed properties and/or short sales. According to the Department, the most appropriate service a licensee can give a distressed property owner is to refer them to resources that can help them including HUD certified counselor or legal counsel.

Foreclosure Fairness Act (HB 1362) (61.24)

The Foreclosure Fairness Act was passed by the legislature and signed by Gov. Gregoire in April. It took effect in July 2011. The Act gives homeowners a fighting chance to stay in their home and it gives the homeowner avenues to get out if that is their option. "Foreclosure may sound like someone else's problem but when it is happening to tens of thousands of families, like it's happening right now, it's our shared problem" said Sen. Adam Kline who sponsored the Senate companion bill, SB5275) It really tears the connecting threads of our neighborhood."

Washington State became only the third of 27 states that do not require courts to approve foreclosure actions to establish a foreclosure mediation program under which at risk homeowners can have face to face negotiations with their lenders to modify mortgage terms. Homeowners who fall behind on their mortgage payments will have 30 days from the time that they get an initial letter from their lenders to respond and ask for a period of time called "meet and confer." If they do, they will get 60 days to talk with the lender and counselor before a notice of default is issued. During this time, a housing counselor or a lawyer can refer a homeowner to a new third-party mediation program. If they get that referral, borrowers will be able to have in person negotiation with their lenders and a third-party mediator who is charged with ensuring that both parties participate "in good faith." At the suggestion of the Washington Bankers Association, the bill also requires lenders to pay \$250 for every default notice. The proceeds from which will raise an estimated \$7.5 million to support the expansion of housing counseling programs. The fee will primarily fund more housing counselors but will also fund outreach campaigns and enforcement dollars for the Washington State Attorney General's office. About 46% of the 4,212 people who participated in the first year of Nevada's similar mediation program were able to stay in their homes, the Tacoma news Tribune reported. The law also defines the fees that may be charged for loan modifications.

The foreclosure fairness act gives homeowners rights that they didn't have in the past. It imposes obligations on the lender as well. The lender is required to send a notice of pre-foreclosure options to the homeowner explaining that they are in default. This triggers a 30 day period which the homeowner can use to exercise their rights. First the homeowner MUST acknowledge that they have received the letter and exercise their rights. They can request a face-to-face meeting with the lender. Next, they can request mediation with the neutral mediator trying to remediate a resolution short of foreclosure or some alternative to foreclosure. Homeownership counselors are available in Washington State that can help distressed homeowners walk through this process.

It seems intimidating to contact the lender when a homeowner is in default but now they have options and counselors to help. The non-profit HUD counselors are certified. The foreclosure fairness act does not provide any relief for the homeowner but it does provide a process to follow to find the homeowners best option and give the homeowner more time to work on it. Options might include a loan modification, short sale, deed in lieu of foreclosure, or maybe even a reverse mortgage. But the most important part of this new Foreclosure Fairness Act is that the homeowner must respond to the lender within 30 days of the date of the pre-foreclosure letter so the foreclosure process will be delayed for those 90 days to allow negotiation. If the homeowner doesn't call the lender the foreclosure can start within 30 days. A distressed homeowner can get more information from a new website called www.Wahomeowner.com. There is also information at the Washington state Attorney General's office website.

Short Sale Negotiator Requirements

In order to engage in short sale negotiations for compensation the person must have either a (1) real estate license under RCW 18.85, (2) mortgage loan originator license under the Washington Consumer Loan Act RCW 31.04 or the Mortgage Broker Practices Act RCW 19.146, or (3) be an attorney licensed to practice law in Washington.

The individuals who conduct loan modification activities on behalf of such entities must obtain a mortgage loan originator license under one of those two acts. Short sales conducted as part of the negotiation of a real estate transaction by a real estate broker do not require licensure under the CLA or the MBPA unless the real estate broker is paid separately for short sale negotiation in addition to receiving a commission for the real estate transaction. Real estate brokers who engage only as third-party short sale negotiators or loan modification service providers must obtain also a mortgage originator license.

The MBPA and CLA licensing exclusions for real estate brokers do not apply to those who act solely as a third-party short sale negotiator or loan modification provider. Negotiating short sale for a fee is not an activity that requires a real estate license; therefore, a loan originator license from the DFE is required if that is the only service that the individual provides. Real estate licensees must be providing real estate brokerage services for the transaction in order to negotiate a short sale on behalf of either party to the transaction. Real estate agents may not charge any additional fee above the normal and customary commission to provide short sale negotiation services. Real estate and mortgage professionals engaged in short sale negotiations should review any activities that might be considered the unauthorized practice of law.

It is hard to imagine that foreclosures were an everyday occurrence years ago after we have had such an active market for over a decade!

Unauthorized Practice of Law

What this means to a real estate agent is that there are limitations as to what they can do under real estate law. Because of that famous “Heritage House” lawsuit and agent is limited to filling out forms that have been prepared by an attorney. In many of the short sale, REO, and foreclosure transactions agents have been presented in transactions with non-standardized forms and when in doubt a licensee should discuss these forms with the designated broker and avoid advising buyers regarding these forms. In many cases it would be wise for a buyer to get legal advice.

Fraud in Real Estate Transactions

As a real estate agent or a loan officer in Washington State, it can be hard sometimes to imagine that there could be a criminal sitting next to you at the office, across the table during a real estate transaction or online processing a mortgage loan. But, fraud is rampant in our industry. Money and property are being stolen almost invisibly. The only currency is paper and documents. It is quiet and very clean with a pen or a computer mouse. Most people involved in fraudulent transactions don't experience a great amount of guilt. In many cases, people are unaware of the crime committed and the consequences of their actions. No one *seems* to get hurt. There are no deadly weapons. The victim is not even bleeding.

Ignorance does not "save" you in our court systems. If you are sitting in court and you say you didn't know you were involved in a fraudulent transaction, you don't get a free pass to get out of jail.

What echoes throughout real estate offices and mortgage companies is the excuse that "everybody is doing it." We heard that when we were children but it didn't save us when we did something wrong.

The FBI has placed "White Collar Crime" as a seventh on the top ten list of investigative priorities. The FBI categorizes white-collar crimes as deceit, concealment, or in violation of trust and are not dependent on the application or threat of physical force or violence. Such acts are committed by individuals and organizations to obtain money, property, or services to avoid the payment or loss of money or services, or to secure a personal or business advantage. White-collar criminal activities can include money laundering, bank fraud, and fraud against the government.

According to the FBI, Mortgage fraud is a material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan. In other words, it is the intentional enticement of a financial entity to make, buy or insure a mortgage loan when it would not otherwise have done so, had it possessed correct information. If the misrepresentation alters a decision, then misrepresentation becomes fraud, which is a state and federal crime punishable by up to 30 years in prison and a \$1,000,000 fine.

In many cases, the opportunity to make money quickly and quietly becomes attractive to people that are scheming. Sometimes, people see others as easy targets.

Often real estate agents, mortgage brokers and investors get caught up in transactions that can easily make them money with only a few twists and turns. They don't see a hurt victim and use the "everybody is doing it" reasoning to justify fraud. Some perpetrators are of the criminal mindset and others just go along because it appears to be safe and quasi legal. Not very many agents and lenders have been "caught" but the Washington State Department of Financial Institutions and the FBI Financial Institution Fraud Unit are busy at work. You could be part of their next investigation. Do you look good in an orange jumpsuit?

There are a number of schemes in the market that are fraudulent. It is important not to participate in any transaction where there is not full disclosure or participate in any possible fraud.

The most common scheme in the market today is what is sometimes known as “short sale flopping.” This is where a buyer makes an offer on a short sale and prior to closing attempts to find another buyer. The buyer might market the property, for example, on craigslist.com for a higher price that is negotiated with the bank. Then the first buyer closes the short sale and at another time, either the same day or up to a few months later. The attempt is to deceive the lender, the buyer is unlicensed and cannot market the property that he doesn’t own, and the second buyer is often not informed about the previous short sale.

There are numerous foreclosure rescue schemes. Homeowners may be susceptible to predatory rescue scams. Red flags for fraud and schemes include:

- guarantees to stop foreclosure
- a promise the homeowner can buy the house back or rent it
- upfront fees to help stop foreclosure
- instructions not to contact the lender
- a promise to transfer the title or eliminate the mortgage, or
- a request for a seller to execute a power of attorney.

Other types of fraud include:

- The Advance Fee Fraud where a person is asked to send some fee to process a transaction for an out of country buyer to purchase a property, to get a million dollars out of a country, or to start the process to get an inheritance from a relative that perished in the tsunami. Those are only a few examples. In the case of the real estate example, they often offer higher than asking price and promise higher commissions.
- Mortgage Fraud where a lender does anything from falsifying loan documents, creates fake employment verifications, and uses inflated appraisals. There are about a thousand ways to commit mortgage fraud.
- Mortgage elimination where a homeowner with a mortgage is convinced that the mortgage can disappear with the payment of a fee and the signature on some documents. This scam is all over the internet and is complete fraud.
- Lease and Rental fraud where a listing, vacant house or a rental currently on the market is advertised by a fake owner who offers the property much less than market rent value and asks the prospective tenants to fill out an application and send along a deposit.

Wiring Instructions Fraud Business Email compromise

According to the FBI, the Internet Crime Complaint Center saw a 480 percent increase in the number of complaints filed last year by those in the real estate industry. Most of these complaints were related to wire fraud, a scam becoming more common in the real estate industry.

Washington State is listed in the top ten list on the Internet Crime Center 2016 report for the reported number of victims and the reported number of losses due to Internet Crime. In 2016 there were 6874 victims in our state compared to California with over 39,000 victims. But, the numbers of victims in Washington are substantial compared to the rest of the country. The loss per victim in Washington state is \$725,638,734. The number of victims is not nearly as high as all kinds of other internet crimes like the advance fee fraud, phishing and non payment or non-delivery. But, the monetary losses are exorbitantly high. The next highest reported monetary losses are from Confidence Fraud/Romance and non-payment/non-delivery.

A real estate phishing scam cost a New York State Supreme Court judge over \$1 million.

Business Email Compromise/Email Account Compromise leads all the other types of internet crime with reported monetary losses over \$360 million dollars.

BEC is a scam targeting businesses (not individuals) working with foreign suppliers and/or businesses regularly performing wire transfer payments. EAC is a similar scam which targets individuals. These sophisticated scams are carried out by fraudsters compromising email accounts through social engineering or computer intrusion techniques to conduct unauthorized transfer of funds. Most victims report using wire transfers as a common method of transferring funds for business purposes; however, some victims report using checks as a common method of payment; The fraudsters will use the method most commonly associated with their victim's normal business practices.

In real estate, victims are often the buyer of a property. An email account with the real estate agent or escrow has been compromised. When it comes time to wire funds for closing, the scammer creates a ghost account and sends wiring instructions that are different than the escrow instructions. Once the buyer emails the funds, they are lost and gone off to most likely another country.

According to Law.com, "Earlier this month, the FBI told the Washington Post that in 2017, cyber criminals stole or attempted to steal almost \$1 billion from real estate purchase transactions. That figure is up from \$19 million in 2016, which makes wire fraud the fastest growing real estate cybercrime in the U.S."

"As with any other target for cyber criminals, if there is an opportunity to profit, the criminals will come. That said, there are likely three reasons real estate is attractive to cyber criminals. One, because of the diversity of targets. Second, because they prey on unknowing home buyers who don't know how to spot a scam, and three, because of the amounts involved—it is not uncommon for buyers to wire transfers for hundreds of thousands of dollars."

Prevent yourself from becoming a victim. There are two primary victims. They include the hacked email account holder and the buyer who emailed the funds.

Make sure that the buyer emailing funds is aware of the scam. Be in touch with escrow through known channels. Use the contact information given at the beginning of the transaction. Beware of any changed phone numbers or email accounts. For example, if there is a request to transfer funds that comes to the buyer from escrow using a Yahoo or Gmail account, it is a pretty sure guess that the email is a ghost one. Real Estate agents and transaction coordinators show beware clicking on an unknown link.

Washington State Fraud Cases

Two very large cases of fraud in Washington State have received national attention in 2010-2013.

The Hellickson Company boasted about being the nation's leading firm specializing in short sale properties. Michael Hellickson started his real state career in 1991, before he even graduated from high school. With over 417 Short Sales, and more than 325 REOs in under 10 months, he boasted as being in the top 1% of all agents nationally! Hellickson sold over 473 homes in less than 8 months according to his website. But his real estate career in Washington State ended after a long investigation by the Washington State Department of Licensing.

Shawn Portmann was involved to such a great extent in loan fraud that an entire bank in Pierce County closed. He was touted as the most successful loan officer in the country. He boasted that he could get anyone a loan to buy real estate no matter their circumstances.

Property Disclosures

Most lawsuits against brokers are in the area of misrepresentation. The majority are based on water problems including storm water runoff, leaking basements, failed roofs, broken or leaky pipes, Siding problems, adequate water supply and mold.

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

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

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

The Law of Agency also says that certain information is NOT considered a material fact.

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

If you happen upon a prospective listing whereby there was a “negative stigma” that could affect a buyer’s decision to buy, it is important to contact the broker and corporate attorney about disclosure to the buyer!

A seller must fill out the environmental portion of the Seller Disclosure form if there is a “yes” answer to an environmental question.

Most sellers are honest about their disclosures but buyers should not rely on the disclosures. The ability for a buyer to win in a case against a sellers fraudulent or mistaken disclosure report form has proved fruitless in the most recent precedent setting cases.

Buyer Beware

Alejandre v Bull

Mary Bull sold a house to Arturo and Norma Alejandre. The buyers subsequently learned that septic system was defective and sued the seller for fraudulently or negligently misrepresenting its condition. The trial court dismissed the Alejandres' claims determining as a matter of law that the Alejandre's had failed to prove their claims and that the claims are barred by the economic loss rule. The Court of Appeals reversed. The Washington State Supreme court reversed the Court of Appeals stating that under Washington law, the defective septic system at the heart of the claim is an economic loss within the scope of the parties' contract. The Alejandre's cannot meet their burden to show the defect in the septic system could not have been discovered through a reasonable inspection and failed to present sufficient evidence.

In this case, Mary Bull owned a house that was served by a septic system. A year prior to selling she noticed soggy ground over the septic system. She had the tank emptied and patched a broken pipe. In April 2000 she applied for a connection to the city sewer but abandoned the idea when she found out there was a \$5000 hook up fee. She put her house on the market in June 2000 and sold it to the Alejandre's. The agreement showed that the property was served by a septic system and that she would have it pumped prior to closing. The Property information disclosure statement said the septic was last pumped and inspected in fall 2000 and a broken line was replaced. She answered "no" to the inquiry whether there were any defects. There was a contingency in the purchase and sale agreement on a septic inspection. If the seller did not receive notice of disapproval, the inspection contingency would be deemed satisfied. The bank required an inspection of the property and it stated that the septic system "Performs intended function" and "everything drains OK."

The Alejandre's closed and moved into the house and a month later smelled an odor inside and outside and heard water gurgling. They hired the septic tank service that had previously been hired by Mary Bull. They said they could pump the tank but could not fix the problem because the drain fields were not working and he had told Mary Bull that she needed to connect to the City sewer. The Alejandre's hired another company to connect to the sewer system that discovered that the baffle to the outlet side of the septic system was gone, thus allowing sludge from the septic tank to enter the drain field and plug it. In the end, the cost to repair the problem was close to a third of the purchase price of the house.

The Alejandres sued Mary Bull for fraud and misrepresentation. The court found that the Alejandre's failed to present sufficient evidence and entered a judgment in favor of Mary Bull. The court of Appeals reversed. But the Supreme Court found that the contract governed the parties' transaction, the parties had the opportunity to allocate the risk of loss in the contract and the tort claim was barred. The buyers claimed damages from the failed septic system were purely economic losses and the buyer was therefore limited to contract remedies.

It was the Alejandres' duty, under the purchase and sale agreement to exercise due diligence and to satisfy themselves that the septic system was acceptable. If upon a reasonably diligent inspection, they discovered the septic system was not in good working order, their remedy under the

purchase and sale agreement was to rescind the contract or seek other contract remedies. To recover, they must prove that the contract they signed was breached and that they did not show sufficient evidence for the economic loss rule which did not occur. If a buyer discovers a defect and claims the cost to repair that defect, an economic loss, the terms of the transaction are documented in the sale agreement. The buyer is limited to any available contract remedies. The Property Information Disclosure form is “Not considered part of any written agreement between the buyer and the seller of residential property.” RCW 64.06.020(3) The disclosure form is for disclosure only. The disclosure law also restricts the seller’s liability. “The seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.” RCW 64.06.050(1) So the Property Information Disclosure form, even if it contains errors, cannot support any claim for damages against the seller.

Douglas v. Visser.

On February 25, 2013, the Court of Appeals decided Douglas v. Visser. In that case, the Terry Visser, a *real estate broker*, and his wife purchased a fixer house in Blaine with the intent to fix and rent it. Much of the structure of the house was rotten to the point that the workers could not get nails to hold. The seller told them to make it look good and cover it up so that it could be sold.

The seller checked “no” and “don’t know” on many items on the Property Information Disclosure report. The Buyer asked for more information and a copy of the sellers pre-purchase inspection. The Seller hand wrote some answers and didn’t provide the previous inspection. The Buyers hired a home inspector who noted three small areas of rot. But the inspection report said that they were not structural and that the buyer should deal with them if the rot spread. After closing, the buyers discovered that the house was uninhabitable and essentially had to be rebuilt from scratch. They sued the seller. The buyer prevailed at trial. The trial judge found that the seller had committed fraud and awarded the buyer the cost to rebuild the house. The seller appealed.

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

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

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

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

Lead Paint Disclosure

When a property being sold/leased was built before 1978, the owner/landlord must fill out a “Lead Based Paint Disclosure” form. This is a Federal law that requires a seller or landlord to provide the buyers or tenants about lead based paint. The owner of the property must disclose the location of any known lead based paint on the property and if the property has been inspected. If it has, the owner must provide the buyer/tenant with a copy of the inspectors report. The seller must also give a buyer 10 days to inspect for lead based paint.

The seller/landlord must also provide the buyer with a booklet called “Protect your Family from Lead In your Home.”

Mold Disclosure

In 2005 Washington State passed a law that requires landlords to provide documentation warning tenants of “the health hazards associated with exposure to indoor mold.” This information must either be given to the tenants individually or posted in a public area. It is important that this information is disclosed to you prior to you signing your lease, as it is the obligation of the landlord to do so. Furthermore, it is required that the landlord maintain a residence that is “fit for human habitation,” and in accordance with existing health codes or ordinances established for the State of Washington. It is also the responsibility of the landlord to maintain the structural integrity of the building and that the “dwelling unit [is] in reasonably weather-tight condition.” However, there are no specific requirements of the landlord to test or remove toxic mold. It is advised that when you suspect mold is present to contact a lawyer prior to moving forward. The Department of Health has more information.

Section 4 Current Legal Issues

Quiz

Fair Housing and Anti Discrimination

1. The Civil rights Act was passed almost 150 years ago making racial discrimination illegal when purchasing property. True / False
2. Sexual orientation is a protective class in Washington State. True / False
3. Washington Law on Discrimination only covers housing. True / False
4. Unlike Federal law, the Washington State law covers ALL real estate transactions. True / False
5. Perceived HIV **is / is not** (circle one) considered a protected class under Washington State law.
6. Handicap was amended to read as "disability" under the Washington Law. True / False
7. The Washington State Human Rights Commission administers the Discrimination Law. True / False
8. An occupant cannot be expelled from occupancy because of religious preference. True / False

Carbon Monoxide law

9. Carbon monoxide can be detected because of the rancid smell. True / False
10. Carbon monoxide can be deadly or cause permanent brain injury. True / False
11. In 2009 the legislature passed a law requiring carbon monoxide alarms in all new residential construction. True / False
12. Owner occupied single-family residences that are sold must have CO alarms installed prior to buyer occupying. True / False
13. The rules for installation of CO alarms are written by (SBBC) _____
14. Carbon Monoxide only found in properties with gas fireplaces. True / False
15. The symptoms of Carbon Monoxide poisoning are similar to _____

Landlord tenant Legal issues

16. Under the Landlord Tenant Act only the landord must provide written notice prior to entry in the unit. True / False
17. A tenant has the right to request one free copy of the _____
18. An out of state landlord must have a representative in the county where the landlord has tenants. True / False

Title Insurance Regulations

19. Title insurance companies are regulated by the Office of the _____
20. Only title insurance/ escrow classes can be taught without a fee by title companies under the regulations. True / False
21. It is now against license law for a real estate licensee to accept anything of value from a title insurer for business. True / False
22. The title insurance commission regulates the amount of money a title company can spend on self promotional items. True / False

Short Sales and Foreclosures

23. The Distressed Property Act is to protect homeowners from scams involving consultants claiming to stop foreclosure. True / False
24. A loan modification can only be done by a _____
25. The Foreclosure Fairness Act gives homeowners behind on their mortgage money to get them back on their feet. True / False
26. Under the Foreclosure Fairness Act a homeowner can request a _____ to _____ meeting with the lender.
27. Under the Foreclosure Fairness Act, the homeowner must respond to the pre foreclosure letter to delay the process. True / False
28. In order to engage in short sale negotiations for compensation, the person must have either:
a. _____
29. The Heritage House Case reminds agents they can only fill out preprinted forms prepared by an _____ or they are practicing law.
30. A property owner has other potential options instead of a short sale including _____

Fraud in Real Estate Transactions

31. _____ does not save you in a court of law.
32. A real estate agent could jeopardize their real estate license or even go to federal prison for committing acts of _____
33. One popular foreclosure rescue scheme promises to eliminate the _____
34. A lender falsifying loan documents is considered fraud even though underwriting ok's the loan. True / False

Property Disclosures

35. Landlords are required to provide tenants with information warning about health hazards associated with exposure to _____
36. The Property Information Disclosure form is to be completed by the listing real estate agent. True / False
37. The Property Information Disclosure law RCW 64.04 is a **federal / State** (choose one) law.
38. If the seller must check something under the environmental section, the seller must provide the form. True / False
39. The lead paint Disclosure must be made for all houses sold before _____
40. If an agent has a question on any legal matter, it is imperative to discuss it with the _____ broker of the firm.
41. In the *Alejandre v Bull* case, Mary Bull was aware that there was a failed septic drainfield. True / False
42. The Supreme Court in Washington found that the buyer was only limited to contract remedies. True / False
43. If the buyer finds a defect after closing, an economic loss, the buyer is limited to contract remedies. True / False
44. The Property information Disclosure Form is not considered a part of a written agreement between the parties. True / False
45. In the *Douglas v Visser* case, the seller was a real estate broker. True / False
46. Most sellers assume, mistakenly, that if the seller's disclosures are fraudulent. True / False
47. The buyer's duty is to beware, _____, and to _____
48. A buyer should assume that there is no real remedy for any misrepresentation by the seller. True / False
49. A buyer should order a re-inspection on anything that appears on the inspection that could lead to a problem. True / False

Quizzes for Washington Real Estate Law

You must attach the Evaluation to this Answer Sheet to receive clockhours.

Section 1 Intro to Law and License Law				Section 2 Law of Agency			
1		31		1		31	
2		32		2		32	
3		33		3		33	
4		34		4		34	
5		35		5		35	
6		36		6		36	
7		37		7		37	
8		38		8		38	
9		39		9		39	
10		40		10		40	
11		41		11		41	
12		42		12		42	
13		43		13		43	
14		44		14		44	
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17		47		17		47	
18		48		18		48	
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30							

Section 3 Contract Law				Section 4 Current Legal Issues			
1		31		1		31	
2		32		2		32	
3		33		3		33	
4		34		4		34	
5		35		5		35	
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I attest that I have read the materials and have answered the questions. The mandatory evaluation is attached!

Print Name _____ **Company** _____ **Signature** _____ **Date** _____

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



Mandatory Evaluation

Did you read the Real Estate Law book? YES / NO
 Did you complete the quiz and attach answer sheet? YES / NO
 Did you enclose Tuition on secure website? 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. 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. _____

Washington Real Estate Law		
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 agents that take clockhours from my school!

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