



Consumer Rights

The most common consumer rights
when selling or purchasing real estate

by Natalie Danielson

This is a 5 clock hour course that looks at the laws that affect the rights of a consumer that is purchasing or selling a property in Washington State. The rights are a result of state and federal laws. The course looks at the laws from the rights of a consumer.

PROFESSIONAL *Direction* INC

email: clockhours@gmail.com

www.clockhours.com

A Washington State Approved Real Estate School for Clock Hour Education under R.C.W. 18.85.



Please Read this First! Thanks!



Clockhours by Mail

1. You will be provided with a booklet of with the class material here as a pdf. It is only to be used for Clockhours under Professional Direction. Any other use by permission only.
2. The course has been divided up into one hour sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
3. **Answer** the questions on the quiz answer sheet.
4. If you have any questions regarding the material or the questions, don’t hesitate to email Natalie Danielson.
5. **EMail** Answer Sheet and Evaluation to Professional Direction clockhours@gmail.com . Pay online using debit/credit card.
6. The certificate will be mailed within usually 24 hours 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.

Thanks!

Natalie Danielson

PROFESSIONAL Direction Email: clockhours@gmail.com

Consumer Rights Curriculum

Session Hours	Major Topics	Method of Presentation
1 1/2 hour	Law of Agency Identify duties of an agent to consumer	Lecture Discussion
2 1/2 hour	License Law Real Estate license required Disclose licensed Firm name	Lecture Discussion
3 3/4 hour	Disclosure Know property information disclosure law and disclosure requirements for lead paint and condominiums.	Lecture Discussion
4 3/4 hour	Fair housing List the protected classes and their rights with regards to real estate.	Lecture Discussion
5 1/2 hour	Commission Learn disclosure requirements and anti trust violations.	Lecture Discussion
6 1/2 hour	Confidentiality Know the confidentiality definition in the Law of Agency.	Lecture Discussion
7 1/2 hour	Contracts Identify consumer rights to copies of agreement and presentation of offers.	Lecture Discussion
8 1/4 hour	Escrow and Title Learn the consumer rights in escrow and title	Lecture Discussion
9 1/4 hour	Financing Know the RESPA and TIL requirements and Fair Credit Reporting Act.	Lecture Discussion
10 1/2 hour	File Complaints Question/Review	Lecture Discussion Quiz

Consumer Rights

The most common consumer rights when selling or purchasing real estate

Introduction

When real estate agents work with the consumer to find, negotiate, purchase, sell, and lease real estate they need to understand the rights granted to the consumer by a variety of laws and rules. They include federal laws, Washington State statutes and administrative rules, local laws, common laws, and rules. As brokers, we are bound by all the regulations. They are created primarily to protect the consumer. Most consumers aren't aware of their rights and don't understand them. It is important to know some of the basic rights that your consumers should be aware of during a transaction. Sometimes consumers forget that the other client has rights, also.

The consumer rights include, but certainly are not limited to the following:

- ✓ Law of Agency
- ✓ License Law
- ✓ Disclosure
- ✓ Fair Housing
- ✓ Commission
- ✓ Confidentiality
- ✓ Contracts
- ✓ Escrow
- ✓ Financing
- ✓ File Complaints

Course Objectives

As a result of taking this class the agent shall be able to:

1. List the major consumer rights and the agent responsibilities to the consumer.
2. Identify the legal source or many of the consumer rights.
3. Explain the rights to the consumer.

1. Law of Agency

The consumer has the right to have representation.

Agency Representation

The consumer has the right to be represented by a licensed real estate agent if they choose. The relationship and the duties are listed in the written agreement called a Brokerage Services Agreement that must be signed between the broker and the consumer.

Brokers hand the Law of Agency pamphlet to a prospect, for example. Those few pages spell out many rights that the consumer may not know. This can include representation, confidentiality, and the right to see all offers on the property.

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. Never assume that you can make decisions for a principal!

There is no federal law or statute that all real estate licensees 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. Real Estate Brokers in Washington State are now under statutory duties... they are prescribed by law. The law details their responsibilities and duties.

The agency law applies to ALL real estate brokers in the state including those who work in other areas of real estate including commercial agents, those that sell investment properties, property managers, and agents specializing in business opportunities. To perform real estate brokerage services in this state, a broker must be licensed and practice under a firm.

Written Services Agreement

When working with a consumer, a real estate broker is required to present them with a written services agreement. The agreement is actually between the broker's firm and the consumer. It must include the following:

1. The term or duration of the agreement
2. The name of the broker appointed to act as an agent to the principal (consumer.)
3. Whether the agency relationship is exclusive (which does not allow the agent to enter into agency relationship with another firm during the term) or non-exclusive(which allows the principal to enter into an agency relationship with multiple firms at the same time.)
4. Whether the principal consents to limited dual agency
5. The terms of compensation
6. In an agreement with a buyer, whether the broker agrees to show a property when there is no agreement or offer by any party or firm to pay compensation to the broker's firm; and
7. Any other agreements between the parties.

Agency Disclosure

Real estate agents must disclose in writing before the broker's principal signs an offer, or as soon as reasonably practical, but before the parties reach mutual agreement. The disclosure shall be set forth in a separate paragraph titled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing titled "agency Disclosure. Any terms of compensation must be included that offer by a party or a real estate firm to a real estate firm representing another party.

Duties of a Licensee Generally

According to the Law of Agency, "Regardless of whether a broker is an agent, the broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may not be waived:" These are the basic rights that the client expects. As part of the Law of Agency, a complaint by a consumer could be made to the Dept of Licensing if the consumer feels that these rights were violated.

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. This is difficult to quantify, but it is important. Evaluate whether you have the expertise to handle a transaction beyond your knowledge, for example.

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. This includes withholding information that could affect the decision 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 that are written! This is a law that should be taken into consideration before uttering the words, "The seller does not want to other offers." This is a law that the other party may be well aware of when writing the offer.

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 as it pertains to their brokerage services..

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. If the BROKER is aware of a material fact that would affect the buyers decision to buy or how much would be paid, then it must be disclosed by the broker.

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

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

6. To provide a pamphlet on the law of real estate agency to all parties to whom the broker renders brokerage services as soon as reasonably practicable.
Every real estate purchaser, seller, landlord, and tenant should receive a copy of the pamphlet when working with a real estate broker. There must be documented proof that they received it.
7. To disclose in writing to all parties to whom the broker renders real estate brokerage services whether the broker represents the buyer or the seller or is a limited dual agent.
8. To disclose in writing any terms of compensation offered by a party or a real estate firm to another real estate firm representing another party.
All compensation from a real estate transaction must be paid to a firm and not directly from a consumer to a broker.

Duties of a Seller's, Buyer's, and Dual 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).

- a. The consumer has the right to expect the agent representing them to be loyal and take no action that is adverse or detrimental to their interests in a transaction. A transaction is defined as when a party signs an agreement.
- b. The consumer has the right to expect that the agent will disclose any conflicts of interest.
- c. The consumer has the right to be advised to seek expert advice on matters beyond the agent's expertise.
- d. The consumer has the right to expect the agent to keep certain information confidential.
- e. The consumer has the right to expect the agent to make a good faith effort to provide their services to find a property for a buyer or market a sellers property until the principals have entered into a contract for the purchase or sale of property or as agreed otherwise in writing.

A seller's broker is not obligated to seek additional offers while the property is under contract.

A buyer's broker is not obligated to seek additional properties while the buyer is under contract to purchase or show buyers property where there is no written agreement to pay commissions.

Duties of a Limited Dual Agent

The consumer has the right to be informed and agree in writing prior to a dual agency. This agreement occurs on the Seller's Listing Agreement form. There may be a situation where a broker from the same office has a buyer for the listing, for example.

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. In addition, the consumer is not always aware that when there is a dual agency situation and a dispute happens, their agent may be a limited dual agent and not representing them exclusively.

Under the amended Law of Agency RCW 18.86.020 under dual agency 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 limited dual agent . . ."

A limited dual agency provides limited representation to both the buyer and the seller in a transaction. Limited dual agency requires the consent of each principal in a written services agreement.

Limited Dual Agency can occur in 2 situations.

a. When the same broker represent the buyer and the seller. In this case the broker's designated broker and any managing broker responsible for the supervision of that broker, are limited dual agents.

If you sell your own listing, you must have it in writing with both parties in separate brokerage service agreements that you are representing them as a limited dual agent. If there is a dispute, you and your designated broker and a supervising managing broker (if there is one) are all limited dual agents and cannot take "sides."

b. When the buyer and the seller are represented by different brokers in the same firm. In this case, each of the brokers solely represent their principal that they were appointed to represent by the designated broker. The designated broker and managing broker responsible for the supervision of these brokers is a limited dual agent.

In this case, the brokers would represent their clients. The brokers are technically "appointed" to represent clients by the designated broker as it states in the law. The designated broker and any supervising managing broker are the limited dual agents. If there is a dispute, for example, the broker would be able to represent their client and "take sides."

Undisclosed dual agency (often occurring when the agent has acted as an agent for both parties without disclosing) is where problems can happen.

Payment of Compensation

The payment of compensation does not create or establish an agency relationship according to the Law of Agency.

In the past, the seller paid commissions to the listing and the buyers agent. In the past century, all real estate agents represented the seller (and not the buyer.)

This changed when this Law of Agency passed. There is a presumption of buyer agency. The Buyers can have an agent represent them. The seller paid commission to the listing office which shared it with the firm of the buyer's agent.

In October 2019, the NWMLS made three changes to the rules. In summary they include:

1. The listing firm will be able to publish the selling office commission for the public.
2. The seller is not required to offer to pay compensation to the selling office when listed in the NWMLS.
3. If there is no published Selling Office Commission, the buyers agent can negotiate the payment of commission. If the offer of commission is less than what the selling office would expect then there can be negotiation if there is a Buyer's Agency Agreement.

The changes to the Law of Agency deals with the payment of compensation. A firm's compensation maybe paid by the seller, the buyer, a third party or by sharing the compensation between firms. To receive compensation from any party, a firm must have a written brokerage services agreement with the party the firm represents. The written services agreement must contain the following regarding compensation.

1. The amount the principal agrees to compensate the firm for broker's services as an agent or limited dual agent;
2. The principal's consent, if any, and any terms of such consent, to compensation sharing between firms and parties; and
3. The principal's consent, if any, and any terms of such consent, to compensation of the firm by more than one party.

In certain commercial real estate transactions, the buyer is to receive a "compensation Disclosure."

Duration of Agency Relationship

Once an agency relationship is established it continues until the earliest of the following:

1. Completion of performance by the broker
2. Expiration of the term agreed upon by the parties
3. Termination of the relationship by mutual agreement of the parties
4. Termination of the relationship by notice from either party to the other

However, a termination by either party does not affect the contractual rights of either party.

The listing agreement might have costs the consumer may be liable for, for example.

Short Sales

Where there is not enough equity in the property to pay the seller's liens, the transaction is called a "short sale." The seller's real estate firm must disclose to the seller that the decision by any beneficiary or mortgagee, to release its interest in the property for less than the amount the seller owes to allow the sale to proceed, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including real estate firms compensation.

2. License Law

Right to work with a licensed real estate agent

The Law relating to the Licensing of Real Estate Brokers and Salespersons R.C.W. 18.85 requires that a person be a real estate broker or managing broker and therefore the consumer shall expect licensure if he or she:

Listing, selling, purchasing, exchanging, optioning, leasing, renting of real estate or any real property interest therein; or any interest in a cooperative. or any interest in a floating home or floating on-water residence, as defined in RCW [90.58.270](#); (this was added in 2015.)

Negotiates or offering to negotiate, either directly or indirectly, the purchase, sale exchange, lease or rental of real estate or business opportunities, or any interest therein;

Listing, selling, purchasing, exchanging, optioning, leasing, renting, or negotiating the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, lease, exchange, or rental of the land upon which the manufactured or mobile home is or will be located;

Advertising or holding oneself out to the public by any solicitation or representation that he or she is engaged in real estate brokerage services;

Advising, counseling, or consulting buyers, sellers, landlords, or tenants in connection with a real estate transaction;

Issuing a broker's price opinion. For the purposes of this chapter, "broker's price opinion" means an oral or written report of property value that is prepared by a licensee under this chapter and is not an appraisal as defined in RCW 18.140.010 unless it complies with the requirement established under RCW 18.140.

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

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

Be careful to not perform real estate brokerage services casually without the knowledge or permission of your designated broker.

Examples of activity that real estate agents should not be doing for consumers that must fall under the designated broker may include some of the following:

- *Writing advertising for a seller that is selling "For Sale by Owner" even if they do not have the equity to list the property with the agent.*
- *Running an advertisement/posting on [Craigslist.com](#) for a seller that can't get the property sold so decides to rent.*
- *Helping a "For Sale by Owner" negotiate a sale to a prospective purchaser for a fee not listed on the agreement and not run through the real estate firm.*
- *Providing forms from the MLS to a "For Sale by Owner" or a rental for their own use.*

RCW 18.85.361

Disciplinary action -- Grounds.

In addition to the unprofessional conduct described in RCW 18.85, the director may take disciplinary action against any person engaged in the business or acting in the capacity of a real estate broker, designated broker or real estate firm regardless of whether the transaction was for the person's own account or in the capacity as a broker, managing broker, designated broker or real estate firm and may impose any of the sanctions and fines specified in RCW 18.235.110 for any holder or applicant who is guilty of:

(1) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter RCW 64.36, 19.105, 18.235, or 18.86.030 or the rules adopted under those chapters or section;

(2) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

An example might be helping a buyer obtain a mortgage by not being honest on the loan application. For example, having the knowledge that the buyer has also purchased another house using another about the same time hoping that the properties close at the same time without the knowledge of the lenders.

(3) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

An example might be helping a client purchase a property using a false appraisal indicating a higher value than the property is being purchased for.

(4) Accepting the services of, or continuing in a representative capacity, any broker or managing broker who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

It is imperative that your real estate license be current and active! Check your renewal date! Get the clockhours!

(5) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

An example might be depositing the earnest money check into the real estate agents personal account.

(6) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

If you are being investigated, answer any request for information from the Dept of Licensing. Not cooperating could be a greater violation than the complaint being investigated!

(7) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

If you are convicted of a violation that would endanger the public, stop selling real estate if your license is revoked. For example, burglars have a tendency to go rob a house again after jail time because that is what they know best.

(8) Advertising in any manner without including the real estate firm's name or assumed name as licensed in a clear and conspicuous manner in the advertisement; except, that real estate brokers, managing brokers, or real estate firms advertising their personally owned real property must only disclose that they hold a real estate license;

This includes your website, blogs, emails, and any flyers or postcards that advertise you as an agent, your company, or your listings. Check to see that your firm name AS LICENSED is on all your marketing. There are agents that carry business cards without the full firm name. There are websites without any tracking back to a firm but clearly market the writer as a real estate agent. Your firm name should be found within "one click" on the internet.

If you have a rental, for example, that you own personally, you must say that you are a licensed agent on all advertising even if you are renting it on your own and not through your office.

If your firm files with the state, a broker or managing broker can use an assumed name.

(9) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the purchase and sale agreement.

You are not to accept a water ski boat as payment of commission without the Designated Broker's knowledge and approval.

(10) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

No one should be writing you a check during a transaction except escrow.

(11) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

The real estate broker shouldn't be getting paid for anything other than the transaction. There should be no undisclosed conflict of interest!

(12) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(13) Issuing an appraisal report on any real property in which the broker, managing broker, or real estate firm has an interest unless that interest is clearly stated in the report;

If a broker intends to purchase a property, it shouldn't only be based on their own market analysis. Contact the designated broker for information.

(14) Misrepresentation of membership in any state or national real estate association;

One time there was a broker that advertised being the top real estate broker in the Eastside Real Estate Association. The only members were the broker and a relative of a fake association.. That was clearly misrepresentation.

(15) Discrimination against any person in hiring or in real estate brokerage service activity on the basis of any of the provisions of any local, county, state or federal antidiscrimination law;

The buyer has the right to live wherever they choose. The seller cannot discriminate in the sale of their property.

(16) Failing to keep an escrow or trustee account of funds deposited relating to a real estate transaction, for a period of three years, showing to whom paid, and other pertinent information as the director may require, such records to be available to the director, or representatives, on demand, or upon written notice given to the bank;

For THREE years the firm must keep records of all the funds.

(17) In the case of a firm and its designated broker, failing to preserve records relating to any real estate transaction for three years following the submission of the records to the firm;

According to license law, the firm and the designated broker must keep records for 3 years. This includes all communication, contracts, and information on the transaction. The broker is not required to keep the records.

(18) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof with a reasonable time following execution;

Note that the law says "within a reasonable time following execution." You must remember to get copies of all contracts to your clients in a transaction!

(19) In the case of a broker or managing broker, acceptance of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate firm with whom the broker or managing broker is licensed;

As a broker or managing broker, you cannot accept any kind of commission or payment from any other person or company for real estate brokerage services except from the Firm.

(20) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

A broker can suggest a lender, for example, but cannot receive any compensation from the lender for the referral.

(21) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

If you are buying or selling or leasing or are in part ownership, you must disclose that fact to all parties to the transaction that you have a real estate license.

(22) In the case of real estate Firms, and managing and designated broker, failing to exercise adequate supervision over the activities of all the brokers and managing brokers within the scope of this chapter;

The ultimate responsibility lies with the Firm and the Designated Broker.

(23) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

OK... duh! We don't need untrustworthy brokers in transactions. The consumer has the right to expect honesty.

(24) Acting as a vehicle dealer, as defined in RCW 47.7.011, without having a license to do so;

(25) Failing to assure that the title is transferred under 46.12 RCW when engaging in a transaction involving a mobile home as a broker, managing broker, or firm.

How your license works for you

You have a license to sell real estate. That law falls under the Consumer Protection Act. The reason you have to be licensed is to protect the consumer.

Preparing Agreements

You are licensed to prepare contracts and agreements. After the Heritage House case it was made clear that real estate licensees can prepare “preprinted forms prepared by an attorney.” That means that you need to be very careful whenever you prepare a blank addendum or create a transaction that is way beyond the normal business transaction. USE THE MLS FORMS!

You are not licensed to prepare agreements for a fee. If your neighbor sells her house to her friend, you are NOT licensed to prepare the documents unless you are part of the transaction and it is run through your office and broker. If you prepare the documents then it could be considered the “unauthorized practice of law” and could land you in court. You cannot be paid for real estate brokerage services by anyone other than the Firm.

Attorneys have long since joked that the blank addendum to the purchase and sale agreement is a “paycheck” to them.

Who can sell for commission

Only licensed real estate agents can sell real estate for a fee. There are loan officers in the market today that are preparing purchase and sale agreements today for clients who will obtain financing from them. Then, they are also presenting the offers. This is a violation of license law.

Licensed Assistants

If you have an assistant, his/her activities may require a license. Those activities can include telemarketing, negotiating an offer, or presenting an agreement. The activities that do not require a license can include answering the phone, creating flyers, and preparing mailings.

Fraudulent Documents

If a client or a lender asks the real estate agent to prepare a purchase and sale agreement with the intent to deceive a bank or a seller, this is fraudulent. Some agents have been known to say that the “lender said it was perfectly fine and legal.” It doesn’t matter what the lender says, if the intent is to deceive the end bank to let them believe, for example, that there is more equity in the house than there actually is, then the agent could be facing a court or hearing because it was the agent that prepared the purchase and sale agreement.

3. Disclosure

There is no place for secrets in Real Estate

Property Information Disclosure Law

The Property Information Disclosure law R.C.W. 64.06 provides for a form for disclosure by the sellers whether they are listed with a real estate agent or selling “by owner.” It is to be used for all transfers of residential real property including multi family dwellings up to four units, new construction, condominiums not subject to a public offering statement and certain timeshares. It is not part of license law.

The potential purchaser must receive the form the seller within 5 business days of mutual acceptance of the purchase and sale agreement unless the buyer and seller mutually agree to a longer time period.

The potential purchaser has the right to rescind the agreement anytime until closing if the seller does not provide a disclosure statement.

The buyer has the right to rescind the purchase and sale agreement at any time within 3 business days from the seller’s delivery of the disclosure statement. The buyer’s decision to revoke or rescind may be made in the buyer’s sole discretion. The buyer does not have to identify any particular concerns about the statement.

If the seller becomes aware of additional information or inaccuracies, or a change in the property’s condition the buyer has the right to receive an amended disclosure statement.

The buyer will have the option of:

- (a) approving and accepting the amendment, or
- (b) rescinding the purchase and sale agreement within 3 business days after receiving the amended disclosure statement.

If the seller takes corrective action to restore the accuracy of the disclosures at least 3 business days before closing, then the buyer will NOT have a right to revoke.

The buyer should understand that the right to revoke the offer exists. The buyer can waive the right to revoke the offer. It is always risky to advise a buyer to waive any rights. Although that is a decision for the buyer to make the buyer’s agent should make sure the buyer understands the options.

In some circumstances, it may be in the buyer’s interest not to immediately waive the right to revoke the offer and instead to take advantage of the full three day period in which to decide whether or not to revoke.

In other circumstances, it may be in the buyer’s interest to waive the right to revoke the offer immediately upon receiving the disclosure form because it may make the buyer’s offer more attractive. But, if they do so they could give up some rights and time.

The buyer has the right to be told all material facts that may affect their decision to buy or what to pay for a property. The form does not change a seller's obligation to disclose defects. If there is a material defect in the property that is not the subject of a specific question in the form, a seller must nevertheless disclose the defect to the buyer.

If the Agent is aware of the defect and fails to disclose it to a buyer is almost certainly liable to the buyer to the same extent as the seller.

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

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

The paragraph on the NWMLS inspection Form 35 reads:

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

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

Vacant Land Disclosure

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

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

Property Information Disclosure Act under definitions amended to add:

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

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

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

Right to disclosure

The consumer has the right to have full disclosure. The real estate salesperson or broker cannot according to license law R.C.W. 18.85.230:

Make print publish, distribute or cause to be made any false statements, descriptions or promises of such character as to reasonable induce any person to act thereon, if the statements, descriptions or promises purport to be made or performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises.

Knowingly commit or be a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies up on the word, representation or conduct of the licensee.

If the information would AFFECT THE BUYERS DECISION TO BUY... OR HOW MUCH THE BUYER WOULD PAY... then the information must be disclosed.

Lead Paint disclosure

In 1996 the Federal Government passed a law that requires that consumers receive certain information before renting, buying, or renovating pre-1978 housing because the paint in these properties prior to 1978 may contain lead. Lead from paint, chips, and dust can pose serious health hazards. Sellers are to disclose known information on lead-based paint hazards before selling a home. There is a **federal form** that buyers will have up to 10 days, unless otherwise agreed, to check for lead hazards.

Condominium Disclosure

If a consumer is purchasing a condominium, there are specific disclosures that must be made. According to the Washington Condominium Act R.C.W. 64.34 certain information must be provided to the consumer prior to a purchase.

The Public Offering Statement

If the condominium is new construction, the developer must provide the purchaser with a Public Offering Statement which contains such information as;

- ✓ Declaration and amendments
- ✓ Survey map and plans
- ✓ Association articles of incorporation
- ✓ Association bylaws,
- ✓ Rules and regulations
- ✓ Balance sheet
- ✓ Budget

Resale Certificate

A resale certificate is to be provided to a purchaser or the sale could be voided. The seller and an agent of the association must sign the certificate. It includes:

- ✓ The declaration and bylaws
- ✓ Rules and regulations of the association
- ✓ Financial statements
- ✓ Budget
- ✓ Insurance statement
- ✓ Minutes of the annual board of directors

4. Fair housing

Right to see and purchase any dwelling regardless of protected class

According to the Federal Fair Housing act of 1968 and 1988 the consumer has the right to sell, rent, preview, or negotiate for a dwelling regardless of their protected class. The Federal Law provides for the following protected classes:

- ✓ Race
- ✓ Color
- ✓ Religion
- ✓ Sex including LGBTQ+
- ✓ National origin
- ✓ Familial status
- ✓ Handicap

Prohibited Acts under Federal Fair Housing Act

The following is a summary of the prohibited acts under the federal law.

1. Any refusal to sell or rent, or otherwise make unavailable, a dwelling after receiving a bona fide offer, or refuse to negotiate for the sale or rental of a dwelling, because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.
2. Discriminating in the “terms, conditions, privileges, or services of the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.
3. Engaging in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.
4. Make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. This advertising prohibition applies to private owners who may otherwise be exempt from the Act.
5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
6. Engaging in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.
7. Denying access to, or participation in a multiple listing service, brokers association or other organization to the business of selling or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin. This also includes creating terms or conditions on membership based on a prohibited criteria.
8. For persons whose business includes engaging in the business of residential real estate related transaction, to discriminate in making available, or in the terms or conditions of, any residential real estate related transaction because of race, color, religion, sex, handicap, familial status or national origin
9. “Coerce, intimidate, threaten, or interfere with” any person exercising a fair housing right or on account of a person having assisted others in exercising such rights.

Availability of Dwellings

The consumer has the right to be provided accurate information about the availability of dwellings for sale or rental regardless of their race, color, religion, sex, handicap, familial status, or national origin.

HUD's regulations specifically list the five following prohibited actions, if such actions are done because of race, color, religion, sex, handicap, familial status, or national origin. These five items are only examples and the Act also prohibits other activities not necessarily listed below:

- (1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.
- (2) Representing that instruments such as deeds, trusts, CC&R's, or leases, which purport to restrict the sale or rental of dwellings because of a protected class, preclude the sale or rental of a dwelling to any person of a protected class.
- (3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of a protected class.
- (4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.
- (5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether they are actually seeking housing.

Washington State Law on Discrimination

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

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

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

Local Jurisdictions prohibit discrimination

Some local jurisdictions may have additional anti discrimination laws and other protected classes that can include sexual orientation, military discharge, matriculation, source of income and personal appearance.

Avoid Violating the Fair Housing and Anti Discrimination laws!

A Single Woman in Washington State in the Spring of 2004 made an offer on a property \$3000 over the asking price of \$196,000. The listing agent called the buyer directly and left a voice mail message saying that her offer was not accepted even though it was higher because they thought that the married couple would be more “stable” and that when it came down to financing that thought that “something could go wrong.” The listing agent, along with the sellers, chose another offer from a “married couple” over the higher offer of the “single woman” because they “thought” that it would be stronger simply because she was single and a woman instead of a married couple.

In our country we have federal laws for over 35 years that give every American the right to purchase property regardless of their race, color, religion, sex, national origin, familial status and handicap. You cannot make the assumption that one buyer is better than another because of what they look like or whether they are male or female or whether they are in a wheelchair. If the buyer is qualified they have just as much right to purchase the property! You and the seller do not have the right to “choose” a “better” buyer based on their background or their looks!

Which means that you should never “sell” the buyers based on who they are, how many kids, whether they go to the church or temple in the neighborhood, how old they are, if they are male or female.

No letters from the buyers, no photos, and no resumes should accompany the offers.

Every American has the right to purchase property. If the buyer is qualified and the price is right then it doesn't matter who they are or what they look like!

If the seller asks about the buyers it is important to remind them that based on court cases.... if you give them that information and they use it to base a decision to sell You could be fined and possibly lose your license... AND... they could end up in court with the Federal Government. They could lose more money than they could imagine!

If a person feels that there is a LIMITATION, PREFERENCE, DISCRIMINATION OR DISPARATE TREATMENT based on a protected class, then they could file a complaint with the Department of Housing and Urban Development or hire an attorney to sue.

5. Commission

Right to negotiate commission.

The consumer has the right to negotiate the commission. The primary anti-trust law that affects real estate brokers is Section 1 of the Sherman Anti Trust Act. It is to preserve free competition in the marketplace.

All that needs to be shown is that two separate business entities participate in a common plan or design.

Words of conspiracy are not necessary. A broker announcing an intention to his competitors that he was raising his commission rate could be deemed to be a violation. No formal contract or conspiracy is necessary.

The real estate commission charged is not “set, determined, usual, typical, standard, etc” when discussed with the consumer. The Department of Licensing or the Association of REALTORS does not determine the commission rate. The anti-trust act is designed so that brokers can’t act in restraint of trade... to set a common commission. This protects the consumer from price fixing.

The real estate firm can establish a commission rate for their office or company.

Payment of Commission

The consumer is only required to pay commission if there is a written agreement for the payment of such.

The law R.C.W. 19.36.010 says that any agreement, contract and promise shall be void, unless such agreement is in writing and signed by the party to be charged. This includes an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission.

According to Disciplinary Action- Grounds RCW 18.85.361 (19) In the case of a broker or managing broker, acceptance of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate firm with whom the broker or managing broker is licensed;

All commissions in Washington State are made payable to the licensed firm. The commissions are never paid directly to the real estate licensee whether they are a broker or an managing broker. The licensed firm is the only recipient of a commission check. The firm is then able to distribute to the brokers according to the independent contractor agreement. In some cases, the firm has escrow distribute the check pursuant to a written agreement.

Sharing of Commissions

It is unlawful for any licensed firm, broker, or managing broker to pay any part of the licensee's commission or other compensation to any person who performs real estate brokerage services and who is not a licensed firm, real estate broker, or managing broker in any state of the United States or its possessions or any foreign jurisdiction with a real estate regulatory program. It is unlawful for any licensed real estate firm to pay any part of the firm's commission from brokerage services or other compensation to a real estate broker or managing broker not licensed to do business for the firm.

Disclosure of Commission

Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal is a violation and subject to disciplinary action under RCW 18.85.361 (11).

YOU CANNOT BE PAID ANY KIND OF COMMISSION OR FEE OUTSIDE OF CLOSING AND THE HUD STATEMENT!

The consumer is to have full disclosure in writing of all facts if the real estate salesperson or broker charges or accepts compensation from more than one party in any one transaction R.C.W. 18.85.361

Buyer Agency

In October 2019, the NWMLS changed the rules regarding disclosure and the negotiation of commission for the Selling Office (SOC)

Publishing the Selling Office Commission

The first change is that the Listing firm will be allowed to publish the Selling Office Commission (SOC) on the firm's public website. The amount of commission paid by the Seller to the Buyers' agent will be on the IDX and VOW websites and the client portal in the Matrix system.

"Making this information readily available to consumers allows for complete transparency with regard to buyer's broker compensation and provides consumer with additional information at the outset of the transaction," according to the NWMLS. "Early and better access to all the relevant information about a real estate transaction will help consumers make informed decisions about every component of the listing, selling, and purchasing of real estate."

Seller not required to Offer Commission to Buyer's Broker

The second change removes the requirement that a listing contain an offer of compensation to the buyer's broker. That would mean that the seller may not have to publish a payment of commission to the broker that procured the buyer.

The NWMLS will change the forms to alert sellers that the buyer's brokers are not required to show property for which there is no written agreement to pay compensation to the buyer's broker.

Buyers' Broker can Negotiate Commission with Seller

If the seller does not publish an offer of compensation to the buyers' broker, the revised rule allows the buyer and the buyer's broker the opportunity, as a part of the buyer's offer, to negotiate for compensation for the buyer's broker.

The NWMLS explains, "This change allows for greater flexibility for sellers when listing property, while affording buyers and buyer's brokers a vehicle for negotiation for compensation (if none is offered) when making an offer to purchase." On the other hand, the commission for the buyer's broker has been typically paid by the seller at closing. If the buyer is required to pay the commission to the buyer's broker, that may affect the opportunity for the buyer to qualify to purchase the house as lenders may not let them finance the commission amount.

Then there is the issue of representation. According to WA state Law of Agency, the agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee. The brokers that represent buyers' in transactions will lose buyers who purchase directly from the listing agent to "save" the commission. Those buyers may not understand that in that case, they will have no representation in the transaction.

Selling Firm Commission Addendum

The form 41(c) will be revised to include the three options for buyers and buyers' brokers to negotiate for compensation from the seller.

1. If there is no offer of compensation in the listing, the form will allow the buyer and the buyer's broker the opportunity to negotiate for compensation for the buyer's broker to be paid by the seller:

2. Consistent with the current Rule 104(d), the form will allow the buyer and buyer's broker the opportunity to negotiate for additional compensation from the seller, where the SOC is less than the buyer's obligations to the buyer's broker in a Buyer Representation Agreement; and
3. If the property is not listed (i.e. a For Sale by Owner (FSBO)), the form will allow the buyer and the buyer's broker the opportunity to negotiate for compensation for the buyer's broker to be paid by the seller.

Buyer Representation Agreements

The rule revisions may increase the use of buyer representation agreements (Form 41A Buyer agency Agreement) While not required under WA state Law, many buyer's brokers are not using the forms. The seller has an agency agreement within the context of the listing agreement.

The Buyer agency agreements have been in use for many years, but most brokers have been avoiding them. Form 41(a) gives the consumer the option to have an exclusive agency agreement or not with a real estate broker. Brokers, the NWMLS and the Dept of Licensing have encouraged buyers' broker to use the form. The Buyer Agency agreement establishes a formal, contractual relationship with the buyer. That relationship can be exclusive if the buyer wants to buy any property within the boundary or non-exclusive which would not tie the buyer to an agent if they find something not within the contract terms.

In addition, it provides for the payment of commission for the buyer's brokers services in the event the seller does not offer sufficient compensation for the buyers' broker. The buyer and the buyer's broker can agree about the payment of commission. The revised form also provides that the buyer is responsible for inspecting the property to ensure that the property is suitable for the buyer's needs. This form has a provision which entitles the prevailing party in any dispute to recover its reasonable attorney's fees and costs.

The Buyers Agreement No Agency has also been revised with similar terms.

Earnest money

Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner before the owner's acceptance of the offer to purchase, and such fact is shown in the purchase and sale agreement is a violation of license law RCW 18.85.361.

There is no law that requires that a consumer have an amount of earnest money in order for a purchase and sale agreement to be valid. It is a promise for a promise. There is no minimum amount of earnest money. A consumer can negotiate a transaction without earnest money or the promise of an amount.

1. Confidentiality

Some secrets are meant to be kept

Right to Confidentiality

The consumer has the right to have certain information remain confidential. The Law of Agency R.C.W. 18.86.010 (6) defines confidential information. Confidential information means information from or concerning a principal of a broker that:

1. Was acquired by the broker during the course of an agency relationship with the principal;
2. The principal reasonably expects it to be kept confidential;
3. The principal has not disclosed or authorized to 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.

The agent has the duty to not disclose any confidential information from or about the seller or buyer, except under subpoena or court order, even after termination of the agency relationship according to R.C.W. 18.86.040 (d), R.C.W. 18.86.050 (d), and R.C.W. 18.86.060 (d).

Fair Credit Reporting Act

According to the Federal Fair Credit Reporting Act lenders have a responsibility to keep certain information confidential including the credit report.

What this means is that the lender CANNOT release a copy of the credit report to the spouse OR the real estate agent even though the purchase and sale agreement may say otherwise. The lender cannot tell the agent the credit scores of the buyer at any time. The buyer cannot give the lender permission to release the credit information.

The lenders have agreements with credit reporting agencies. They have the Federal Fair Credit Reporting Act to follow and violating it could cost them their job. There is no way that a buyer or an agent can write an agreement to change the limits of the Fair Credit Reporting Act.

The buyer has the right to keep confidential information about their credit from anyone other than the lender.

7. Contracts

Put it all in writing and give copies!

Right to have real estate contracts in Writing

The consumer has the right to have all contracts in writing that authorize or employ an agent or broker to sell or purchase real estate for compensation or commissions R.C.W. 19.36.010.

If the consumer is signing an agreement that is not to be performed in one year from the making including leases it must be in writing.

Right to Copy of Agreements

The License Law regarding negotiating agreements states that the real estate broker shall be responsible for negotiating the agreement between the seller and the purchaser.

- The consumer as a purchaser shall have all written offers presented for acceptance or refusal and a copy of the agreement shall be delivered to the purchaser immediately following the purchaser's signing.
- The seller shall have a copy of the offer to purchase shall be delivered as soon as possible following seller's signing and acceptance of purchaser's offer.
- The purchaser is to receive a copy of the agreement to purchase bearing the signature of the seller as proof that the purchaser's offer was accepted.

Right to have purchase and sale agreement presented

The consumer has the right to expect that the purchase and sale agreement shall be presented to the seller for acceptance or refusal according to W.A.C.

The consumer has the right to have 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 according to the Law of Agency.

Right to review the resale certificate/ public offering statement

Right to have documents reviewed by an attorney

The consumer has the right to hire an attorney at their expense to review the documents.

The consumer shall be advised to seek expert advice in matters beyond the expertise of the real estate agent according to the Law of Agency.

Right to Sign

The consumer has the right to sign his or her own name to any document or contract. If the agent signs the name of the consumer it may be considered fraudulent. In other words, YOU are NEVER to sign even initials for a buyer or seller at any time! If the contract has both names in a marital situation, if only one party signs, the contract may be voidable by the other party.

8. Escrow and Title Insurance

Right to review HUD before signing

The Consumer has the right to review the Closing Document 3 days prior to signing.

Each buyer and each seller in every real estate transaction has the right to get a complete detailed closing document as it applies to the buyer and a complete detailed closing statement as it applies to the seller.

Right to neutral third party

The party to the transaction has the right to a neutral third party when using the services of an escrow agent or L.P.O. when signing and closing a transaction.

Right to have title report reviewed

The parties have the right to review the title report prior to closing. They have the right to challenge any incorrect information on the title.

Right to have disclosure regarding Title Insurance companies

A licensee or firm according to RCW 18.85.053 with a controlling interest in a real estate business shall not 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 agent where the real estate business has a financial interest.

The real estate broker or firm cannot require a consumer as a condition of providing real estate services to obtain title insurance from an agent in which the real estate licensee has a financial interest.

Earnest Money Disputes Resolved

When a transaction fails to close the parties often see the earnest money as a pot of gold that they deserve to have. The earnest money is most often held in a trust account at a real estate office or a third party such as a title or escrow company.

The legislature made changes in Spring of 2015 to detail the procedures for returning earnest money if held by a third party. One of the challenges was that third parties were holding the earnest money in a dispute for sometimes up to a year.

The purchaser agrees in the purchase and sale agreement to deposit a sum of money. When the purchaser breaches the contract and fails to close, they often forfeit the deposit allowing the other party to keep the money. Courts treat these arrangements as a form of liquidated damages.

In 1991 the Legislature created a law governing earnest money deposits as liquidated damages. RCW 64.04.005 states:

A provision in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the other party incurs any actual damages. However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.

In April 2015 a new law regarding how disputes over earnest money on residential real property improved or unimproved was signed. Within 15 days from the receipt of a written demand from a party to the transaction, the holder must either: 1 Notify all parties of the demand, 2 release the earnest money to one of more of the parties; or 3 commence an interpleader action in Superior Court.

If the holder opts to notify other parties, the holder's notice must be in writing sent by US mail and email to the parties last known addresses and include a copy of the demand. It must contain a statement that:

- The parties have 20 days from the mailing date of holders notice to provide notice of their own objections to the release of earnest money; and
- Their failure to deliver a timely written objection within 20 days will result in a release of the earnest money to the party that made the original demand.

If the holder receives an objection within 20 days, it must file an interpleader action in Superior Court within 60 days of receiving the objection or an inconsistent demand. However, the holder may release the funds or delay filing the interpleader action if it receives consistent instructions so to do from the parties after their initial objections. If the holder receives no objections, it must deliver the earnest money to the demanding party within 10 days after the 20 day period expires. The holder may also file an interpleader action at any time, even if no conflicting demands were received.

If the holder of the earnest money follows the procedures outlined in the bill, it is not liable to any person for releasing the earnest money to the demanding party, unless it releases the funds on the initial demand without waiting for objections or filing an interpleader action.

An interpleader action is a lawsuit in which the holder of a sum of money deposits the money or property with the court and names as defendants the parties who assert rival claims to the money. The court then determines the ownership of the money or property and the original holder is absolved of responsibility.

Real estate agents should be careful to not tell one party that they are due the earnest money in the case of a default. Once the earnest money is deposited and when there is a default, the real estate agent technically has no power to get those funds released.

9. Financing

Right to choose lender

The consumer has a right to choose a lender to finance a purchase of a property.

Right to have disclosure

The CFPD regulations come into effect in October 2015. Basically the HUD1 statement will be called the CD or Closing Disclosure and the good faith estimate will be the LE or Loan Estimates. There will be delays if there are last minute changes. Lenders have to be more accurate and will have to provide disclosure three days before closing.

Mortgages transactions can be very complex. Because the forms have been confusing and there have been two distinct bodies regulating the forms, Congress directed the Consumer Financial Protection Bureau to replace old truth in lending and Good Faith Estimate forms. All lenders will be required to give consumers the new Loan Estimate and the Closing Disclosure when the rules go into effect in October 2015.

The Lender is to provide the consumer the Loan Estimate three business days after application. Studies by HUD have found that few consumers “shop” for a mortgage and most often apply and close with the first lender they met. The Loan Estimate will make it easier to compare loan programs. It will use clear language to help consumers understand the mortgage loan. The interest rate, monthly payments and total closing costs will be clearly presented making it easier to compare programs.

The lender is required to provide the borrower the Closing Document (used to be known as the HUD 1) at least three business days before closing on the Mortgage Loan. This additional time will allow borrowers to compare the final terms and costs to the terms and costs the received in the estimate. This will better equip them to raise any questions before they go to the closing table. According to the Consumer Financial Protection Bureau, the new mortgage disclosure will not necessarily delay closings.

If there are significant changes to the loan, the borrower will have an additional three day review. This will occur only if:

1. The Annual Percentage rate increases by more 1/8% for a fixed rate loan or ¼% for an adjustable loan. Lenders have been required to provide a three day review for these changes since 2009!
2. A prepayment penalty is added making it expensive to refinance or sell.
3. The basic loan product changes, such as a switch from fixed rate to adjustable interest rate or to a loan with interest only payments.

There are many circumstances do not require a new three day review. They can include, for example, if a buyer finds a problem on the final walkthrough like a broken refrigerator even if they require seller credits to the buyer. Also, most changes to payments including the amount of real estate commission, taxes and utilities proration and the amount paid into escrow. Typos found at the closing table will not require an additional three day review.

Disclosure of Business arrangements

The Real Estate Settlement and Procedures Act (RESPA) was modified in 1992 to detail controlled business arrangements and Computerized Loan Origination.

The consumer has the right to have full disclosure of any controlled business arrangements including referrals. Any financial interest between the provider of settlement services and the person making a referral must be disclosed as well as the estimated charges.

The RESPA provisions also forbid kickbacks, referral fees or things of value be exchanged between mortgage brokers and real estate brokers with several exceptions.

A referral fee is allowed for computerized loan origination that occurs if a real estate agent or broker compiles information on a computer they can receive a fee.

Right to confidentiality of credit report

The Federal Fair Credit Reporting Act provides for the confidentiality of a consumers credit report. The lender that has a signature and orders a credit report for a borrower cannot provide that information to any other party. The borrower can request a free copy of their own personal credit report.

10. File Complaints

Report violations to Department of Licensing

The consumer has the right to report violations in writing to the License Law or Law of Agency to the Washington State Department of Licensing.
www.dol.wa.gov

Report violations of Discrimination

If a consumer has felt that they have experienced discrimination they can file a complaint with the state or local H.U.D. office.

Report violations to Designated Broker

The licensed real estate firm has the responsibility to have adequate supervision of the affiliated licensees.

Hire an Attorney

The consumer has the right to consult and hire an attorney if they feel that their rights have been violated.

Consumer Rights

True / False Quiz use answer sheet

Law of Agency

1. The consumer has the right to be represented by a licensed real estate agent. True / False
2. If you have a listing that is sold but not closed; you must still present other offers. True / False
3. The consumer has the right to have all money accounted in a transaction for by the real estate agent True / False
4. The real estate agent must provide a pamphlet explaining WA State Law of Agency as soon as reasonably practicable. True / False
5. To represent a client as an agent, the agent must have a written Brokerage Services Agreement signed by them. True / False
6. Technically, the firm appoints one or more agents to represent the seller when an agent lists a property. True / False
7. The agent must be loyal to the client and take no action that is adverse in a transaction. True / False
8. When an agent works with a buyer to purchase a property the agent listed, that would be considered illegal limited dual agency. True / False
9. When an agent writes an offer for a buyer on a property listed with the same firm as the agent, the agent represents both parties. True / False
10. An agent can act as a dual agent without a signed agreement from both parties. True / False
11. An agency relationship can be terminated at any time by notice from either party to the other. True / False
12. An agent acting as a dual agent does not have to disclose compensation prior to being a dual agent. True / False

License Law

13. A person must be licensed to negotiate the sale of real estate in expectation of receiving commission. True / False
14. The consumer has the right to have a copy of the contracts within a reasonable time following signing. True / False
15. The real estate broker or managing must disclose the firm name as licensed on newspaper advertising but not on internet web sites. True / False
16. The broker must disclose when purchasing or selling property in which they have an ownership interest, that they have a real estate license. True / False

Disclosure

17. The seller must fill out a property information disclosure before they can sell their property or the buyer can walk away before closing True / False .
18. The property information disclosure law only applies to seller's who list with a real estate agent. True / False
19. The potential purchaser must receive the form from the seller within 5 business days of mutual acceptance of the purchase and sale agreement unless the buyer and seller mutually agree to a longer time period. True / False
20. The potential purchaser has the right to rescind the agreement anytime until closing if the seller does not provide a disclosure statement. True / False
21. The buyer has the right to rescind the purchase and sale agreement within 3 business days from the seller's delivery of the disclosure statement. True / False
22. In order to revoke the agreement the buyer must identify any particular concerns about the statement. True / False
23. If the seller becomes aware of additional information or inaccuracies, or a change in the property's condition the buyer has the right to receive an amended disclosure statement. True / False
24. The buyer will have the option of:
- a. approving and accepting the amendment, or
 - b. rescinding the purchase and sale agreement within 3 business days after receiving the amended disclosure statement.
 - c. Requiring the seller to fix the problems.
25. The buyer can waive the right to revoke the offer. True / False
26. If there is a material defect in the property that is not the subject of a specific question in the form, a seller must disclose the defect to the buyer. True / False
27. If the Agent is aware of a defect and fails to disclose to a buyer, the agent is almost certainly liable to the buyer to the same extent as the seller. True / False
28. The buyer must receive a lead paint disclosure if the property was built before _____. True / False
29. The purchaser of a condominium has the right to receive a resale certificate which includes, but is not limited to, the financial statement of the homeowners association and a copy of the minutes of the last meeting. True / False
30. The purchaser of a new construction condominium has the right to receive a Public Offering Statement. True / False
31. If a defect has been corrected it still should be disclosed on the disclosure form. True / False
32. The seller must disclose material facts that affect the buyers decision to buy or how much they would pay. True / False

Fair Housing

33. A disabled person shall be able to construct a wheelchair ramp on a rental at his or her own expense. True / False

34. The buyer has the right to see and purchase any property regardless of protected class. True / False

Federal protected classes

35. _____

36. _____

37. _____

38. _____

39. _____

40. _____

41. _____

Examples of other protected classes in other states and counties including Washington State.

42. _____

43. _____

44. _____

45. _____

46. The seller does not have the right to choose one purchaser over another based on race. True / False

47. It is appropriate for a real estate agent to show a Jewish woman properties only in neighborhoods with a high percentage of Jewish residents. True / False

48. The buyer shall have the right to have their offer presented without disclosing to the seller their race and disability or whether they are a woman or man. True / False

Commission

49. The real estate commission charged is determined by a vote of the local real estate agents. True / False

50. The REALTOR association sets the commission schedules. True / False

51. The seller has the right to negotiate commission. True / False

52. The Real Estate agent has the right to be paid commission directly from the seller. True / False

53. The buyer can pay the real estate agent commission instead of the broker. True / False

Confidentiality

54. According to the Fair Credit Reporting Act the buyers credit report is confidential. True / False

55. The seller has the right to keep confidential their motivation for selling or moving. True / False

56. If an agent lists a seller's property but the listing expires and the seller relists with another agent, the information about the seller's bottom price and motivation still remain confidential. True / False

57. The buyer has the right to keep confidential their place of business or source of income/assets if it doesn't affect the sale and they are qualified by a lender. True / False

Contracts

58. All parties have the right to have a copy of contracts immediately when signing. True / False

59. If only the husband signs a purchase and sale agreement, the contract may be voidable by the wife. True / False

60. The real estate agent can sign the initials of the clients they represent. True / False

61. The buyer has the right to have purchase and sale agreement presented whether or not property under another agreement. True / False

62. All parties have the right to have documents reviewed by an attorney. True / False

Escrow and Title

63. Only the seller has the right to review closing document before signing. True / False

64. The buyer has the right to have title report reviewed prior to closing. True / False

65. The seller has the right to challenge anything incorrect on the title. True / False

66. Real estate license law makes it a violation for an agent to accept an item of value from a title company that the title company is not allowed to provide under the Insurance Commissioners guidelines. True / False

67. In the case of a dispute over the earnest money in a sale fail, the third party holder makes the decision who is to receive it. True / False

Financing

68. The buyer's credit report must be released by the lender upon demand to the real estate agents. True / False

69. An Ad that says "nothing down" or "as low as 6% interest rate" is legal under RESPA. True / False

70. The Good Faith Estimate was changed and will now be called the Loan Estimate. True / False

71. The Loan Estimate must be given to a buyer within 3 days after making loan application. True / False

72. Under the new CFPB regulations, the borrower will have 6 days to review the closing documents. True / False

73. The Closing Documents must accurately the final terms of the loan at closing. True / False

File Complaints

74. Only the seller can report violations to Dept of Licensing. True / False
75. Complaints made to the Department of Licensing must be in writing. True / False
76. If a legitimate complaint is filed, the real estate licensee can be arrested and hauled off to jail by the Dept of Licensing. True / False
77. If a licensee does not receive commission from the broker, the complaint can be filed online. True / False
78. If a party feels that they have been discriminated against, they can report violations to HUD. True / False
79. The Duties of a Licensee Generally in the Law of Agency are under the jurisdiction of the Dept of Licensing. True / False
80. In many situations the only place to resolve complaints is in the courts. True / False

Consumer Rights

Answer Sheet

1		31		61	
2		32		62	
3		33		63	
4		34		64	
5		35		65	
6		36		66	
7		37		67	
8		38		68	
9		39		69	
10		40		70	
11		41		71	
12		42		72	
13		43		73	
14		44		74	
15		45		75	
16		46		76	
17		47		77	
18		48		78	
19		49		79	
20		50		80	
21		51			
22		52			
23		53			
24		54			
25		55			
26		56			
27		57			
28		58			
29		59			
30		60			

I attest that I have read the materials and answered the questions. Date Completed _____

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

PROFESSIONAL Direction, clockhours@gmail.com



Mandatory Evaluation

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

YES / NO

Did you complete the quiz and attaché answer sheet?

YES / NO

Did you pay Tuition on the website?

YES / NO

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

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

How long did it take you to complete the course? _____

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

What are 3 things that you learned from the course?

- 1.
- 2.
- 3.

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

Consumer Rights

Print Name	Signature
Company	Address
City Zip	Phone
Email	
License Renewal Date	Date(s) Class taken

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

Professional Direction

email: clockhours@gmail.com

www.clockhours.com