



# Signing Listing Agreements

by

**Natalie Danielson**

A 5 hour course that covers the essentials of listing residential real estate

PROFESSIONAL *Direction* INC

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1. You will be provided with a booklet of with the class material. The booklet. It may not be used for any other purpose.
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. **Questions** regarding the material or the questions, don’t hesitate to email Natalie Danielson.
5. **Scan and EMail** Answer Sheet and Evaluation to Professional Direction. Pay with credit card on front of website.
6. The certificate will be emailed often **within 24 hours** or so of receiving scanned 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!

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# Signing Listing Agreements

## Curriculum

Session Hours	Major Topics	Method of Presentation	Assignment
1 1 hour	Agency Listing Agent Responsibilities	Read Material	Take Quiz
2 1 hour	Listing Agreements Now the Real Work Begins	Read Material	Take Quiz
3 1 hour	Ownership and Disclosure Who owns the Property and are they Hiding Information	Read Material	Take Quiz
4 1 hour	Marketing Listings Fair Housing	Read Material	Take Quiz
5 1 hour	Closing Costs and Commission How Much will this Sale Cost?	Read Material	Take Quiz

# Signing Listing Agreements

A salesperson in the real estate field is a misnomer. We don't own any products to sell. We are "marketing consultants." We try to match prospective purchasers of real property to sellers. Often our job extends further into that of marriage counselor, financial consultant, janitor, referee, collections and answering service. In addition, we are negotiating contracts and putting together transactions most often for the largest single investment made by most people in their entire lives!

The average real estate broker in our area closes about 3-4 transactions a year. There are some brokers that sell more property, some brokers that sell less, some that work in teams, some that are about to retire, and some brokers that are just rookies. There is no magic formula for success in real estate except that for decades trainers have been having brokers repeat over and over, "List to Sell" or "Listings are the name of the Game." Because once a real estate broker has a signed listing, there is a greater chance of success. There is a signed contract for a period of time. When working with buyer, that is not the standard in the industry. You can work with buyers all day or week and then on a Sunday they can walk into an open house and write up a contract with another broker.

This course will cover the listing agreements including agency, contracts, ownership, disclosure, marketing and closing.

## Course Objectives

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

### Agency

- Understand the important role of a listing broker.
- Identify factors that may or may not affect the real estate market.
- Understand the statutory duties as defined in the agency law including the affiliated licensee.

### Listing Agreements

- Accurately complete an exclusive Right to Sell Listing Agreement and explain the major elements of the agreement.
- Contrast an Exclusive Right to Sell and Exclusive Agency Listing Agreements.
- Know the 5 factors that determine a valid contract.

- Explain when the seller must be provided a copy of the listing agreement.
- Identify how a listing agreement may be terminated.
- Explain what happens to current listing agreements under the following conditions: death of the listing broker, brokerage firm goes out of business, broker loses license in a disciplinary action, and listing salesperson transfers to different real estate company.

#### Ownership and Disclosure

- Determine who has title to the property.
- Explain who has the authority to sign, modify, or cancel a listing agreement.
- Know the duties of a broker in regards to disclosure
- Identify environmental factors that should be disclosed
- Know the Property Information Disclosure Law

#### Marketing and Fair Housing

- Learn to identify the four ingredients that create sales of listings.
- Know the Listing Process
- Identify the protected classes under the Federal Fair Housing Law
- Know the Washington Law on Discrimination.
- Recognize conduct and advertising that violates the fair housing laws.

#### Costs to Sell and Commission

- Understand the difference between real and personal property.
- Identify discussions on commission that may be construed as price fixing.
- Understand the payment of commission under a listing agreement and the carry over clause.

# Agency

## Listing Agent Responsibilities?

### Why choose to be a "Listing Broker?"

This is a unique business in that it is easy to get into with little or no investment and only a short training program. But, real estate is also easy to quit. Statistics show that approximately 80% of new brokers will quit prior to their 2 year anniversary date. Often real estate brokers would make more money working full time at a fast food restaurant based on income averages than hanging their license in a real estate firm.

Typically, about 20% of your carpet gets 80% of the wear. See those pathways around your furniture. This is the Pareto Principle. That 20% takes a beating. In the real estate business, about 10% to 20% of the brokers make 80% to 90% of the sales. About 80% of your business will originate from about 20% of your sphere. Think about that again. Your sphere will be the source of most of all your business. Twenty percent will be responsible for 80% of your real estate sales.

The top producers will tell you that there are two primary ways you can make money. They include the listing or sales of property. THE only way to make money in your career is when you have a transaction close. It is like hearing a cash register ringing in the past!

You can clean out your car and show buyers homes all day, every day, for a week. Then, that buyer can walk into an open house and buy from a complete stranger. Buyers, unless they know you, have little tendency to remain "loyal." They are out in the world looking for something intangible that will satisfy their nesting needs and that includes a home or a broker. Now, they must sign buyer brokerage agreements so you have a relationship from the state!

As a listing broker, you have a contract with your client saying that when their home successfully sells, you will get paid a commission. You have a definite employment contract with them. The property can sell, and you can make money while on vacation in Hawaii, while you are working with other clients, or while you are sitting at your desk. Yes, you have responsibilities as a listing broker, but these include getting information on that property to all brokers in your multiple listing service so that other brokers can sell the property. The chance you sell your own listing .... Not matter who much you market, is very, very slim!

As a listing broker, you are "open for business." Just as a store has inventory, so do you have your inventory of properties that you are marketing. Let the other brokers in your area be the chauffeur for customers on a shopping trip and let your properties be the ones that they choose. But if you list properties that don't sell, you are in the business of listing and not in the real estate sales business. You only make money when a property sells.

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*Take only listings that you believe will successfully sell and you will reap the rewards.*

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## **There's two... really good reasons for a seller to list! ... the MLS and Security**

There is no greater tool than the Multiple Listing Service to market a property. It is a powerful and exclusive list of properties for sale. Just like every time a new technology is adopted, there's speculation and fear that the broker's responsibility will be diminished. Before we had computers, the MLS information was on cards.

A prospective buyer may badger the seller with frequent, possibly unscheduled visits. He may also ask questions that the seller isn't able to answer. He may not even be a potential buyer. Consider the security issue!

A "For sale by owner" is inviting a complete stranger into their home at any time. That would be inconceivable just a week prior to putting the property up for sale. The possessions, security and safety of the family are in jeopardy when inviting strangers inside the front door.

Professional real estate brokers pre-qualify buyers and get personal information prior to taking them into the homes that are for sale. Brokers have access to a property via an agreement and usually a key box system available only through the multiple listing services. Often these key box systems are coded when activated to keep a log of brokers that enter the property. With the technology in this new millennium, information on the time and broker that showed the property is collected by satellite!

## **Your Success vs. the Real Estate Market**

What effect do the following have on your success in real estate? What effect do they have on the listings you have?

- The real estate market statistics show that sales are up this month.
- The interest rate is now going to break the 8% mark... pick a rate!
- Your real estate company is having some management problems.
- Amazon just laid off 2600 workers. (hypothetical)
- The Seattle Times just published an article on how worthless brokers are.
- You are in a personal financial bind.

- You can now buy a home with only 2% down.
- Microsoft has just been split into three companies.
- Banks have tightened their standards for borrowers.
- The value of homes is declining rapidly
- Expedia is building a campus to hold over 4000 employees in your neighborhood.
- It is early August and the sun is predicted to shine for a month.
- You just took a class on real estate law.
- You just received an award.
- The seller can list their home online for almost no commission.

The real estate market is full of speculation, predictions and statistics. But, no one barometer exists that measures the state of the real estate market. If the interest rate is high, there may be more sellers looking for good brokers. The buyers will look for more creative financing techniques. If the strongest industries are hit with layoffs, lawsuits, or bad luck then the employees may be ready to sell and move away from the area.

If you have the image of the successful broker with awards lining your bookshelf, then it doesn't mean you don't have to hit the pavement and find business when the market is tight.

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*There will always be a real estate market with buyers and sellers.*

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## The Real Estate Market

The real estate market is constantly changing. But there are factors that remain constant.

- Sellers are real property owners.
- Real property is immovable.
- Your market area encloses all your future listings. *Think about that... all your business is right there "on the street where you live.*
- You only control how many homes you sell not how many homes that sell.
- All property owners are potential sellers. *At some point just about every homeowner will sell ... No matter how adamant they are about staying put.*
- On the average, 20% of the population in the U.S. moves from one place to another. *Think about the people in your world!*
- Theoretically, in 5 to 7 years all properties in your market area will change hands. *Properties sell in some areas more than others.*

The real estate market is buyer driven. At any given time, there are buyers that are ready to buy property. Whether they are scooping up a house in a down market or waiting in line as there are multiple offers in an active market.



## The Buyers decide:

- what they will buy
- when they want to see it, and
  - when they will buy.

## Sellers Motivation

Take a look at the homes on the market, today. The reasons people are selling are as varied as the styles of the homes. Understanding the motivations of the sellers can help you, not only target your market, but also see the obstacles that may be present.

As an broker of the sellers, you should realize that the reasons they are putting their property up for sale might be confidential. The motivation for selling should not affect the price for which the home is marketed.

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*The sellers have the right to obtain the most money possible for their home on the market regardless of whether they are in a desperate situation or moving up.*

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So, if the sellers are “desperate” to sell and move on, then the listing price should reflect that. The sellers can CHOOSE to make their motivation known to the buyers in hopes of creating a sale within a smaller time period. The listing price, if low, could create a quicker sale. The time factor can have a critical relationship to the price the sellers CHOOSE to list their property or the price that they will accept.

## Reasons to Sell

Homeowners choose to sell properties for a variety of reasons. Some sales are forced sales and some are joyful ones. Often there is more than one reason for selling and the consequences can have domino effects. The underlying reasons can create the most obstacles.

No matter what condition the market is in, there will always be customers that have to sell and buyers that are ready to buy. When the market appears to be "dead" this list is the first thing you need to review! Families are growing and shrinking, having financial stresses, marrying, dying, and retiring.

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*There is ALWAYS a real estate market. People have to buy and have to sell for all kinds of reasons!*

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When you choose listings, choose them based on motivation. Do they need, want, or really intend on selling? What are the consequences if they don't sell? If they don't want to sell, they probably won't. This is a very important point to remember... If they don't want to sell, they won't.

When you determine the market value of a property, it should not be determined on the motivation of the seller. The seller can choose to price the property lower or higher depending on their motivation.

# Agency Responsibilities

## Statutory Duties of a Licensee

With the Law of Agency there are statutory duties prescribed for brokers generally and when they represent a client or not in a single agency situation or in a dual agency situation. In other words, the law has specific duties for brokers. Some of these duties cannot be waived. The Law of Agency is revised and becomes effective in January 2024. These changes have been incorporated into this class.

## Duties of a Broker Generally

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*There are duties that a broker owes to all parties that cannot be waived.*

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**1. "To exercise reasonable care and skill."**

This goes without saying. You cannot have a party waive the right of their broker to NOT exercise reasonable care and skill

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

This is where ethics could supersede the actual laws. You have an obligation to all parties to deal honestly and in good faith.

**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.

**4. "To disclose all exiting 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 the licensee has not agreed to investigate."**

Disclose Disclose Disclose Lawsuits do not occur because there was disclosure! Lawsuits happen because information about the property was NOT disclosed. No excuses. Don't try to hide behind any law or anything you have heard. If full disclosure is not happening, then don't work with the client!

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

A broker needs to follow the trail of the money and the dates required for deposit. It seems so obvious. Consumer money is like a hot potato. Pass it off to where it is supposed to go. Do it quickly. Document that you did it. If you don't, you will get burned by the potato no matter how good it looks!

6. **“To provide a pamphlet on the law of real estate agency to all parties to whom the broker renders real estate brokerage services as soon as reasonably practical and obtain acknowledgment of receipt.**

The pamphlet verbiage is in the law and attached at the end of this class. It does not have to be the specific pamphlet from the past. You can recreate it with the same words in another format.

7. **“To disclose in writing to all parties to who the licensee represents.**

8. **To disclose in writing any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.**

## **Broker Duties to the Buyer and the Seller**

1. **The broker owes the following duties to their principal (either the buyer or seller) which cannot be waived except agreed in writing regarding the responsibilities to show property or seek additional offers while a property has an offer.:**

A. **“To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction.”**

*A transaction commences at the time a party signs an agreement.*

B. **“To timely disclose to the seller any conflicts of interest.”**

*If you have an interest in purchasing the property or are related to a buyer who wants to purchase the property, it may be a direct conflict of interest when advising the seller regarding listing price, for example.*

C. **“To advise the seller to seek expert advice on matters relating to the transaction that are beyond the broker's expertise.”**

*If there is a question as to the structural soundness of the property located on a steep bank, for example, it would be wise to suggest that the homeowner hire a structural engineer.*

D. **“Not to disclose any confidential information from or about the principal, except under subpoena or court order, even after termination of the agency relationship.”**

*If the seller is “desperate” and needs to get the property sold, it is not necessarily in their best interest to tell that information to a prospective purchaser ready to write an offer on the property, for example.*

E. **“Unless otherwise agreed in writing after the seller's broker has complied with section 3(1)(f) (provide a pamphlet on the Law of Agency), to make a good faith and continuous effort to find a buyer for the property; except that seller's broker shall not be obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.”**

*If the sellers have signed an offer to sell the property, the broker is not obligated to continue marketing the property. Some sellers request that the broker continue advertising until the purchaser has waived the home inspection or deposited the earnest money.*

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

*You can list another property in the same neighborhood without creating a conflict of interest, for example.*

**(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 breach the duty of loyalty to the sellers or create a conflict of interest.”**

## Duties of a Limited Dual Broker

The section on Dual Agency became an issue because of the confusion and practice of the brokers when working in a dual agency situation and when is there full disclosure.

“ A broker may act as a “limited dual agent” only with the written consent of both parties to the transaction set forth in the brokerage services agreement.” All agents must have written signed Brokerage Services agreements with sellers and buyers.

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 broker also represented the buyer, or using an Agency Disclosure indicating a dual agency situation. The 2024 Law of Agent Statute states that there must be a written agreement to be a limited dual agent signed by all parties in the brokerage services agreement. It must also disclose terms of compensation.

The duties required

- To take no action that is adverse or detrimental to either party's interest in the transaction
- To timely disclose to both parties any conflicts of interest
- To advise both parties to seek expert advice on matters relating to the transaction that are beyond the limited dual agent's expertise
- To not disclose confidential information from or about either party except under a court subpoena
- To make a good faith and continuous effort to find a buyer for the property; except that a limited 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
- To make a good faith and continuous effort to find a property for the buyer; except that a limited dual agent is not obligated to seek additional properties to purchase while the buyer is a party to an existing contract to purchase.

(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a limited 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 brokers licensed to the same firm 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.

(c) 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 limited dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.

(d) The representation of more than one buyer by different brokers licensed to the same firm 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.

**When a broker sells a property listed by another agent in the firm the Designated broker or manager is a limited dual agent.**

In a transaction in which different brokers affiliated with the same firm represent different parties, the firm's designated broker, and any managing broker responsible for the supervision of both brokers, is a limited dual agent. In such case, each appointed broker shall solely represent the party with whom the appointed broker has an agency relationship.

## Compensation

A firm may be compensated by more than one party for real estate brokerage services in a real estate transaction.

A firm may receive compensation based on the purchase price without breaching any duty to the buyer or seller.

To receive compensation for rendering real estate brokerage services from any party or firm, a real estate firm must have a services agreement containing the following

The terms of compensation, including

- The amount of the principal agrees to compensate the firm
- The principal's consent, if any, and any terms of such consent, to compensation sharing between firms and parties, and

In a services agreement with a buyer, whether the appointed broker agrees to show the buyer properties if there is no agreement or offer by any party or firm to pay compensation to the firm, and  
Any other agreements between the parties.

In lieu of obtaining a services agreement, a broker rendering real estate brokerage services to a buyer solely for COMMERCIAL real estate may disclose in writing to the buyer, before the buyer signs an offer with regard to such commercial real estate, the sources and amounts of any compensation the broker has or expects to receive from any in conjunction with such transaction. The disclosure shall be set forth in a separate paragraph titled "compensation disclosure" in the agreement between the buyer and seller or In a separate writing titled "compensation Disclosure."

A firm may receive compensation without a services agreement for the provision of a broker's price opinion, or a referral by one firm to another firm if the referring firm provided no real estate brokerage services in the transaction.

## **Liabilities for acts**

A principal is not liable for an act, error, or omission by an agent of the principal arising out of an agency relationship unless the principal participated in or authorized the act, error, or omission.... Or

Except to the extent that the principal benefited from it and the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent.

A principal does not have knowledge or notice of any facts known by an agent of the principal that are not actually known by the principal.

## **Seller Expectations**

When you evaluate your position as a broker of the seller, you are getting paid commission to successfully sell the property. The seller has expectations of the listing broker. They can be summarized into these 5 major factors. These are not laws or legal, they are general consumer expectations that might exist. This is what they might perceive is the value to them for your services. Consider how much you are worth for each of the 5 factors.

### **1. Advising on pricing and market conditions**

Often prior to signing an employment agreement, brokers give their opinion of market value of the property. It is often this range of value from which the seller decides on the asking price.

### **2. Maintaining the Agency's representation**

Once employed by the seller with a listing agreement, the broker becomes a broker of the seller. An agent can only get paid a commission if there is an employment agreement. The agent owes a fiduciary obligation to the seller who is the employer. A fiduciary is a person who stands in a special position of trust and confidence in relation to someone else and is held to a high standard of conduct. In January 1997 the Washington State Law of Agency took effect.

### **3. Marketing**

When taking a listing the agent has the responsibility to market the property to the prospective buyers. The marketing programs vary from agent to agent and with the different types of property.

#### **4. Negotiating Contracts**

As a broker you have been trained in the legal forms and contracts that consummate a sale. You are held up to the standards of an attorney when filling out contracts.

#### **5. Tracking the Sale through Escrow**

The listing broker has a responsibility to follow the progress of the transaction through the loan and closing process so that any problems that may arise can be tackled head on.

#### **Additional expectations**

Sometimes the seller has additional expectations of the real estate broker. It is important to be clear about expectations when taking a listing. The sellers might have these expectations because their friends, a family member or a neighbor gave them advice. The expectations might include perceived responsibilities.

They can include:

- The broker will pay for all photos, staging and documentation.
- The broker will show the property constantly to prospective buyers
- The broker will have a public open house every Sunday
- The broker will take a cut in the commission if the property doesn't sell right away

There are other expectations that the broker might not realize. The seller's expectations may not be reasonable, but it is good to know them before signing an agreement. The broker is NOT liable for all the expectations of the seller. Don't make promises you cannot keep.

# Managing and Servicing a Listing

Service is your only product! Your motivation in any real estate transaction must spring from a spirit of service....not monetary gain. A successful career in this business can be yours in no other manner.

## AIM

### ADVISE, INFORM, and make RECOMMENDATIONS

- **Advise**

Advise fully. Initially it is your responsibility to advise the sellers about the market and evaluating the property. As their listing broker you must advise them on the service you are pledged to perform.

- **Inform Continually**

It is your responsibility to continually inform your sellers when these services are to be extended, how they are to be extended and where results are to be realized. How often should you be in contact with sellers?

- **Make Timely Recommendations**

It is your responsibility to make recommendations to your sellers for actions or decisions required of them which will best enable you to represent their interests in obtaining:

- The best price
- The most favorable terms
- Negotiating the sale in the shortest time
- Subjecting the sellers to the least amount of inconvenience.

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*Your only “product” in the real estate business is SERVICE.*

*You neither own, possess, or control property.*

*Your ability to service your clients and customers depends upon the amount of knowledge you possess and can effectively apply in practice.*

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# Listing Agreements

**Now the real work begins on a listing!**

## Contracts

Buyers and sellers just hope the transaction will close! But with a contract, there is a plan. It is a roadmap with directions and responsibilities and a GPS to stay on track so that everyone will arrive on time! A listing agreement is a type of employment contract between a seller and a broker. In order to enforce the payment of a commission, the agreement must be in writing.

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*Hope is a universal factor with buyers and sellers.*

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The requirements of a lender and a contract cannot be wished away. Buyers and sellers on their own often assume too many things when they negotiate. Verbal agreements or even changes to a contract are not legally binding and not enforceable. There is security in a valid contract.

Real estate brokers have been trained in many contract law issues. A real estate professional is well versed in the terms and agreements in a contract. They are "held up to the standards of an attorney" when writing a real estate contract.

Negotiating an agreement to sell a property is most effective with an experienced third party. Either the owner will indicate too much eagerness to sell or the buyer too much eagerness to buy. Putting the buyers and sellers together directly can put one in a less than desirable strategic position. It's like going to a foreign market dickering for the right price for a straw hat. Did you really get a good deal or did the seller turn around with glee at taking advantage of a tourist. A real estate professional negotiates only on the basis of a signed contract and with the strictest loyalty to their client.

# Essential Elements of a Contract

## 1. Capacity

To enter into a valid contract, a person must be at least 18 years old and be legally competent.

*What if the sellers are drinking when they sign a contract?*

If the sellers are intoxicated, they may not have capacity to sign the agreement and it may be unenforceable. A real estate broker should avoid purchasing or providing alcohol at the time of signing a contract.

As the baby boomer age, there are sometimes challenges when the seller might not have full capacity. Consult your designated broker.

## 2. Mutual consent

All the parties to the contract must consent to its terms. The consent must include accurate knowledge of the facts and conditions of the contract. It is achieved through offer and acceptance. The acceptance must not vary the offer's terms or it creates a counteroffer.

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

All the parties must sign agreements and accept all changes by way of signature or initials. One spouse can only sign for another with a written power of attorney.

## 3. Consideration

The parties must exchange something of value. The consideration can be in the form of money or a promise.

*Is it a valid contract if there is no earnest money?*

The buyer's promise in the offer to buy a property is sufficient consideration for a valid contract.

## 4. Lawful purpose

The purpose of the contract must be lawful at the time it is made.

*What about a contract to purchase the illegal drugs being grown on the property in the P&S agreement?*

Making contracts to deal drugs are not legal contracts and cannot be enforced in a court. That could even happen if the buyers and sellers are negotiating week in the field in the back of the property!

## 5. Statute of frauds

This refers to the provisions of the Washington State Code that requires real estate contracts to be in writing. Listing agreements must be in writing in order to enforce the payment of a commission. The Agency law changes in Jan 2024 requiring the buyer broker to have brokerage agreements signed.

# Contracts Summary

## Classifications

<b>Express</b> (parties have agreed) vs. <b>Implied</b> (inferred by conduct)	<b>Unilateral</b> (one promise) vs. <b>Bilateral</b> (two promises)	<b>Executory</b> (not fully performed) vs. <b>Executed</b> (fully performed)
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## Ingredients for a Valid Contract

<b>Capacity</b>	<b>Mutual Consent</b>	<b>Consideration</b>	<b>Lawful Purpose</b>	<b>Statute of Frauds</b>
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## Legal Status of Contracts

<b>Void</b> No legal contract exists	<b>Voidable</b> Can be voided by one party	<b>Unenforceable</b> Parties can complete but it is unenforceable	<b>Valid</b> Binding and enforceable
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## Terminating a Contract

<b>Full Performance</b> Contract is executed	<b>Agreement Between the Parties</b> Parties both agree	<b>Assignment</b> Transfer of rights or duties to third party	<b>Novation</b> Substitution of a new contract	<b>Accord and Satisfaction</b> A new agreement between parties
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## Remedies for Breach of Contract

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

A listing agreement is an employment contract between a real estate broker and a seller. The contract form used will depend on the broker, the market in the area, and whether the broker belongs to a Multiple Listing Association (MLS). Many MLS's have standard agreements that are used by the members. In addition, there are rules as to the type of listings accepted. Review the listing agreement available through the MLS.

## Types of agreements

*Exclusive Right to Sell* agreements are the most common listing agreements. The seller has a contract to pay the listing broker a commission regardless who procures the buyer. If the seller finds a buyer, the seller still owes the broker commission according to the terms of the agreement. This is the agreement that is in the NWMLS.

*Exclusive Agency Listing* agreements are listing contracts whereby the seller contracts the listing broker to market the property but if the seller retains a buyer independently of the marketing of the broker, then the seller does not owe the commission. This is not used in the NWMLS.

*Open Agency* listings are agreements where a seller lists a property with one or more real estate brokers. The broker that procures the buyer is entitled to the commission. Most MLS's do not allow open listings in their system.

## Terminating Listings

Listing agreements can be terminated by any of the following. In some cases, the termination will result in the payment of commission and in others there may be no commission paid.

- *Successful closing of a sale* includes an executed purchase and sale agreement. When the sale closes, the listing agreement terminates.
- *Expiration of the Term* of the listing terminates the agreement. The term of the listing agreement is agreed upon by the broker and the seller. There is no minimum or required term of a listing agreement.
- *Mutual Agreement* by both of the parties can terminate the listing agreement. The broker and the seller may agree to end the listing prior to the term of the listing.
- *Loss of Broker License* can terminate the listing agreement. If the broker dies, closes the business, or has the license suspended or revoked the listing agreement terminates.
- *Court Action*. The courts could declare a listing invalid or the listing agreement void.
- *Changing Brokers*. The listings belong to the broker of the real estate office. If the real estate broker moves their license to another real estate firm, the listings only follow the broker if the broker releases the listings to the next broker.

## Safety or Protection Clauses

When a listing agreement terminates there is often a clause that provides for the payment of commission after the termination upon certain conditions. This prevents a seller from intentionally attempting to avoid paying commission to a broker who is entitled to it. A buyer might have been shown the listing during the listing period and subsequently buys it shortly after the listing expires. The listing agent is still due commission.

## Listing Agreement Terms

### *Price*

The listing agreement must have a listing price. The real estate broker advises the seller as to price, but it's the seller that determines the price.

### *Legal Description*

It is important to have a full legal description so that there is no ambiguity as to the property that is for sale.

### *Multiple Listing Association*

The listing agreement may include terms that the listing be shared with other brokers that are members of a MLS in the market. The agreement may define the role of the MLS.

### *Commission*

The listing agreement details the amount of the real estate commission. Commission are often either a flat fee or a percentage of the sales price. The commission is often shared with the cooperating brokers as agreed between members of an MLS. The buyer and buyer agent also sign commission agreements.

### *Agency*

The listing agreement discloses the agency relationship between the clients and the brokers.

### *Term and Extension*

A listing agreement must have a term to be valid. There has been a new law to limit them to 5 years due to a company having people sign 40 year listings. The listing agreement may have a 30 day extension which commences at the time a transaction fails to close.

### *Attorney Fees*

There is a provision for attorney fees if an attorney is retained to enforce the agreement.

### *Property Information*

The listing agreement has a property description. In addition, a seller in Washington State is to complete a "Real Property Transfer Disclosure Statement" when selling a property or the buyer can refuse to complete the sale.

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***If the seller refuses to provide disclosure but checks "yes" on the environmental section, then that section must be given to buyer.***

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# Ownership and Disclosure

Who owns the property and are they hiding information?

## Ownership

Only the owner or an authorized party can sign the listing agreement, make changes to the listing agreement, terminate a listing agreement or sign a purchase and sale agreement. When listing a property, the real estate broker should research the ownership of the property.

If the sellers are not the owners, then they must have a specific power of attorney. It cannot just be a general POA. Verify any POA with escrow.

*A homeowner with a lot next door, might think that he owns it. Needing some extra cash, he lists it for sale. But, once an offer is signed and it goes to escrow, the real owners were discovered.*

*A broker takes a listing from a woman living in a nice home. She is single and the last of her siblings. The house gets an offer, and the escrow closer realizes that the house is owned by the woman's mother who has the same name.*

*A married couple gets a refinance several years ago. The mortgage company requires that the wife not be on the mortgage as she is a liability financially. They get separated heading for a divorce. The husband lists the house for sale. Even though he might be the only name on the deed, there are still community property laws in Washington State.*

# How to Determine Ownership

When taking a listing, a real estate broker is encouraged to obtain a copy of the last deed. The deed will most often show the parties on the title. But, the deed does not always show the legal owners or those that can sign for the property. But, it is the first step.

## ***Individual Seller***

An individual may own the property. Their full name is often on the last deed. Watch that sometimes the name may be different due to marriage, for example. Sometimes you might find a parent also on the deed and the sellers forgot!

## ***Husband and Wife***

Washington State is a Community Property state. Not very many states recognize Community Property. The property may have been bought and owned by a husband and wife and both names may appear on the last title. But, there are circumstances where the last deed has only the name of one of the spouses. It may be community or separate property. It is important to never make assumptions as to ownership in a marital situation. If there is a marriage, the other party most likely has some ownership interest!

## ***Power of Attorney***

The owner(s) of the property may have another person authorized to sign. That authorization is called a power of attorney. There are several types and it is important to check with escrow to see if they will accept the Power of Attorney. It must be notarized. The real estate broker should have a copy of it in the listing file with the broker. Ask why they are using one and beware of circumstances such as a wife having a Power of Attorney for a husband when in the middle of a nasty divorce! Send copy to escrow to verify. It MUST be a POA specific to the real estate.

## ***Corporation or Partnership***

There is an authorized officer or partner that has the authority to sign. The real estate broker should have documentation as to the authorization. A limited partnership may have only the Managing Partner sign. Other partnerships may require all partnerships to sign.

## ***Several Owners***

There may be more than one owner of the property. Without any authorization, all owners must sign all agreements to list and sell.

## ***Trust or Bank***

The property may be owned and managed by a trust or a bank.

## ***Court Representative***

If the property is being sold as the result of a bankruptcy, estate, or partition, there is a representative of the court that is authorized to sign.

## Legal Description

The legal description is the accurate description of the property that is listed. If the legal description is not included then the agreement could be considered unenforceable.

The most effective way to obtain the legal description is from:

- The copy of the last deed from a title insurance company, or
- The title insurance policy that the sellers may have in their file.

The tax parcel number and the street address are NOT sufficient legal descriptions. In addition, the abbreviated legal available from the tax records is not complete. A legal description contains the description of the real property including easements and rights and even common areas if applicable.

## Evaluating Property Condition

Use your eyes, ears and instinct as a broker when looking at a property to list or to sell to a buyer. You may discover something that was not disclosed but would drastically affect any sale. Be aware and trust your judgment.

Both buyers and sellers are afraid that the other party may be hiding something. It is possible that one or the other may not be totally honest in his representations. Even when this is not the case, the suspicions of either party can be a difficult barrier. The law states that there can be no misrepresentations and real estate brokers must abide by it and bring to light any concerns about items of consequence in the transaction. All facts that have an impact on the transaction must be disclosed.

The broker could be liable for active fraud for intentionally misrepresenting a defect with the property. If the broker made false statements about the property and “should have known” that they were false, the broker could be liable for negligent misrepresentation. If the seller misrepresents the property but the seller is unavailable or bankrupt, the buyer’s attorney might look to the listing broker and broker for damages!

When a real estate broker prepares a market analysis report and gets ready to list a property, it is important to look carefully at the neighborhood and the structure. It is not always the questions that you are unsure of the answers, but the questions that you fail to ask.

Encourage buyers to get a home inspection by a licensed inspector. This is the largest purchase a buyer may ever make, so don’t skimp on something as important as an inspection.



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***Anything that would affect a buyer's decision to buy or how much that buyer would pay for the property must be disclosed!***

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***Keep your eyes and ears open. Misrepresentation is the largest source of lawsuits! There is NO such thing as a secret. What is your excuse when the phone rings for non-disclosure of a fact that would affect the buyer's decision to buy the property?***

Ignorance will never hold up in a court of law. The condition of the property directly affects the value. Be especially conscious of environmental factors that should be disclosed including:

**Evaluating the neighborhood.**

Mold Issues	Power lines
Underground Storage Tanks	Cell towers
Asbestos in ceilings, insulation, floors and siding	Lead in paint and plumbing
Indoor air quality from lack of ventilation	Carbon Monoxide
Zoning, new construction, parking, schools, parks, noise	Plumbing? Check for leaks? Septic tank condition?
Utilities? Septic or sewer? Gas or electric? Cable? Water availability?	Attic accessible? Vented? Vented crawl space? Crawl space covered?
Access? Easements? Road Maintenance agreement? Encroachments? Fences?	Dry rot? Bathroom floor? Behind tiles?
Roof? Condition? Type? Pitch? Age?	Floor plan? Functional obsolescence?
Gutters? Down spouts? Standing Water? Drainage?	Cracks anywhere? Peeling paint?
Landscaping? Earth to wood contact?	Wood stoves? Approved wood stoves? Chimneys?
Heating systems? Hot water tank? Electric box? Appliances?	Insulation? Attic? Crawl Space? Windows? Hot water tank?
Pest problems	Any leaking of water anywhere.

Be very careful on the way you phrase a question or answer one. For example, " Mr./Mrs. Seller, is the property on the sewer line?" Does "on" mean hooked up or that it is running in front of the property? Actual lawsuits have centered on just this kind of misunderstanding! The broker is NOT a home inspector, but it is often the questions that don't get asked that cause the problem.

# Property Information Disclosure by the Seller

Since 1994, Washington State Property Information Disclosure law requires a seller of residential and vacant land that is zoned residential real estate in Washington State to provide a buyer with a disclosure statement as designed by law prior to the closing of the transaction whether or not the sale occurred with a real estate broker or without a broker. There are sellers that are exempt, for example, estate sales. If the seller does not provide the buyer with the form, then the buyer has the right to rescind the transaction prior to closing.

The sellers provide it to the buyer. If not, the buyer can choose to not close. There are some sellers that are exempt. The Disclosure Law Form deals with the structure of the property itself.

If the seller does not provide the buyer with the form and the seller does not disclose a material defect, the fact that the sale closes does not automatically relieve the seller from disclosure. The seller, with or without the form, is required to disclose all material defects. The seller could be sued for fraud for intentionally failing to disclose material defects.

According to some attorneys, no other single document in a real estate purchase and sale agreement has generated as much litigation as this particular form. Over 2/3<sup>rd</sup>s of all real estate lawsuits center on misrepresentation.

If the seller is concerned that disclosure may harm their chances of getting the sales amount they hope to get, then most likely the item they don't want to disclose could cost them a fortune in the future. If you are aware that this is happening as their broker, it is important for you to get advice from your Designated Broker.

Real estate brokers and sellers often interpret disclosure differently. What will count is how it is interpreted in the courts. It is a best practice to always disclose anything that would affect a buyer's decision to buy or how much the buyer would pay.

If there are environmental issues that would be answered "yes" on the form, the seller **must** provide that disclosure to the buyer.

## **Seller fills out the form.**

From the day real estate broker were presented with the form, brokers, the MLS and trainers have clearly recommended that the seller is the only one to complete the document. The broker must NOT help or assist in the filling out of the form.

There are times that the broker has reason to believe that information on that form is not correct. In those cases, it is not wise to "play ignorant" and not question the information that you are passing on to the buyer. If the buyer is "damaged" you may find yourself in a lawsuit trying to explain why you didn't question grossly inaccurate information you "should" have known was incorrect.

## **Negative Stigmas**

One of the most controversial topics is the issue of “negative stigmas” that may affect the buyer’s decision to purchase the property. The form does not ask about any defects other than those that directly affect the structure or the title.

A negative stigma may be described as a murder, ghost, barking dog, drug house in neighborhood, or a sex offender in the neighborhood. Across the country buyers have sued sellers for lack of disclosure for all those issues.

If the broker is faced with one of those types of issues, do not make the decision whether or not to disclose with the seller. This is the time to meet directly with the Designated Broker and/ or the corporate attorney!

As an broker, be aware of the “Golden Rule.” You are never “required” to take a listing that would go against your value system or ethical standard. Would you, as a buyer, want to have that defect or issue disclosed?

When working with a buyer, encourage him/her to evaluate the neighborhood for negative stigmas that might affect them including registered sex offenders, an unpleasant smell due to a local sewer issue, or the presence of a vicious dog in a neighborhood.

## **Past or Corrected Defects**

Another hot issue concerns material defects that HAVE been corrected in the past and are no longer “existing.” In several lawsuits in the past decade sellers have chosen not to disclose and the problem has resurfaced putting the real estate broker and broker in a courtroom. If you are faced with this question by the sellers, it is probably in their best interest to DISCLOSE!

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*The seller is never in court because a defect was disclosed!  
Secrets can cost sellers more money than they think they save.*

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# Marketing Listings

## How to find a qualified buyer

There is usually no more effective way to market a property than through the multiple listing service. Each multiple is governed and managed differently, but the brokers pay their share to belong. It currently is only available to member brokers and real estate offices. The information is now available to consumers. The fear was that the role of the broker would change, but that has not happened!

Some multiple Listing associations are owned by the REALTOR Association. In the Puget Sound area, the Northwest MLS is owned by the member brokers as a co-operative. Your broker is part owner.

The market when selling your home is directed to the brokers. Every buyer at one time or another seeks the aid of a real estate professional, regardless of whether or not they plan to purchase from an owner directly.

No organization or advertising program for any amount of money can accomplish what the multiple listing association can do for sellers today. As a member of the multiple listing service the seller is hiring hundreds and maybe thousands of sales representatives for their property.

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*The larger the market added to the larger the demand ... results in the highest price.*

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# Ingredients That Create Sales

There are four ingredients that will create a sale on one of your listings. In order to be successful in the business of listing property, you must keep these four ingredients in mind. If you skimp in the ingredients in a recipe often that concoction turns out less than expected. The same goes in real estate.

## 1. Choose Inventory Carefully

A potential listing is so thrilling! Sitting at a table with the homeowners discussing the sale of a property is like the first date. It is important to choose your listing inventory wisely. If you choose a loser listing, you might be stuck with the property and sellers blaming you for the lack of an offer. You do not want your sign hanging in a neighborhood for a year or more! That sign with your name on it can bring you business in the name of referrals from the neighbors that see it daily. The neighbors will be impressed with your skills when they see a sold sign. But, it will kill any potential referrals if the property does not successfully sell. A loser listing will be like a loser date. Your friends and family will question, "Is that is the type of guy that she likes?" Is that the type of listing that you want to be associated with?

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*When you go to a listing presentation, decide whether you want the listing or not.*

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Some brokers list properties that are expensive, on waterfront, or have some spectacular feature so that they can say that they were the listing broker. They might dream of dozens of phone calls from prospective buyers who drive by the property and call to inquire about the price. But, seldom do real estate brokers ever make enough money or contacts from a listing that doesn't sell.

Imagine all the excuses you will have to dream up for the seller when they haven't seen any quality buyers or an offer in a month, six months, or a year! During the listing presentation, often the real estate broker forgets about the appointments in the future when the property does not sell. Those appointments can be very difficult and sometimes even painful.

It is important to tell the sellers that you are evaluating whether you want to market their property. Let the seller know that you do not take every listing. You only list properties that SELL!

No matter how hungry you think you are, a listing that won't sell will never pay your bills. It will sap your energy, drive, and checking account. You are NOT a victim to the sellers! You do not have to take every listing. If you want someone to say nasty things to you.... Take an overpriced listing or call your ex-spouse! In addition, it does not benefit the consumer to waste their time and energy if there is no hope of the property selling.

## 2. Pricing Property is a Critical Step

The primary factor in getting a property successfully sold is the **PRICE!** All those excuses are wasted effort because the seller is asking too high a price to get the potential buyers interested. The sellers determine the asking price with the advice of an broker.

Your skills in researching and preparing a market analysis report will contribute the most to your success in listings sold. A real estate broker has more tools and technology available than imaginable just a decade ago. In almost an instant, research can uncover the deeds and sale prices of all homes in the area including their size and features. The price must take into consideration the condition or "quality" of the product. The property must "beat" the competition to the buyers.

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*A house for sale is not that different than other products in the marketplace for sale.*

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For example, a car that is available for sale has a sign in the front window. This is not that much different from a house. For example, ask the seller how much his car is worth. If he says the current market value is in the neighborhood of \$8,500, then ask if he has the confidence that you can sell it for \$13,000. Of course not! It encourages sellers to look at their home as a product. It doesn't matter what kind of song or dance you or the seller create to market the property, if it isn't priced competitively, the buyers will look the other way.

## 3. Finding the Largest Audience

The marketing program must connect the largest number of buyers to the property. Marketing programs can consist of small "For Sale by Owner" signs posted on utility poles or full-scale advertising campaigns on television. In the real estate field it is unique that the price a seller often pays for the marketing of their property is seldom directly connected to the cost of the marketing campaign. It is also different from other industries in that, the high cost of marketing efforts *seldom* reflects higher prices or faster sales.

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*In real estate the most effective way to market a property is through the multiple listing service.*

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Roughly over 90% of sales can be directly related to the multiple listing service and the brokers that participate. Now, MLS' are entered the world of the Internet. A prospective buyer can locate a listing in the local MLS, as well as the web sites for most major real estate companies and the web sites for individual brokers. But, the internet has become such a vast source of information that the MLS locally is still the most effective database of available properties. The largest market for a seller listed with a broker is the other brokers in the multiple listing service. The larger the market, the larger the demand, and the higher the price.

You can use social media as a powerful way to expose a listing! The more creative you are, the more you will reach prospective buyers. Make sure you are using the social media sites that you have the most connection with. You are not only marketing the listing for sale, but you are also showing your marketing and skills as a broker! You are looking for more listings and buyers!

#### **4. The Seller Creates the Sale**

The sellers must be in the frame of mind to sell the property. There is often an emotional attachment to a property. This attachment can include the security of a home nest, but also the financial consequences, the conclusion of an era or relationship, either with the property or the sellers.

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*The seller's motivation to creating a sale will be reflected in the price they choose to place on the property.*

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If a property is priced right and is available to the largest audience...if the sellers do not really want to sell...it either won't sell at all...or when it does, the seller will encounter more obstacles than necessary. Most sales will carry with them some kind of perceived pain in the form of emotional attachment, monetary loss, or fear of change.

#### **The Seller's Objectives**

The seller's objectives are to get the most money possible, with the most favorable terms. It would be best if the time frame was short and with the least amount of inconvenience.

#### **The Seller's Alternatives**

The mere fact that a property owner decides to sell identifies them as sellers. Then they are faced with two alternatives:

1. Become a FSBO and attempt to sell their own property, or
2. Hire a real estate broker to represent them and market the property.

# Marketing Program for the Sale of the Listing

Meeting with the seller and agreeing to get the property sold, starts the whole process. The time frame for the sellers can vary.

The Northwest MLS rules require that the broker cannot advertise a listing prior to marketing in the MLS. Some other MLS' can vary on these rules.

As soon as you get the listing agreement signed, the work begins. There is a sense of urgency to get the listing ready and on the market.

## The Listing Process

Provide a pamphlet on the Law of Agency. This must be done as soon as reasonably practicable.

Prepare a Competitive Market Analysis of the home.

Recommend a range of value for the home at today's market.

Discuss the marketing program for the listing.

Complete and review the Listing Agreement with the sellers.

Have sellers fill out the Property Information Disclosure form.

Make recommendations for preparing the home for sale which might include staging.

Install a key box and the "For Sale" sign.

Input the listing to the Multiple Listing Service.

## Marketing Program

Input the listing on your personal website

Get the listing out on social media

Company Tour. Does your company still have tours?

Information sheet on the home.

Brokers open house

Flyers distributed

Advertising Newspapers and Magazines.. but this is being phased out.

Internet marketing

Open house

Direct Mail



Other including the Internet or home page

Video of the listing

Create an event for an open house with a theme

Tell everyone you know. Be creative... Make a video hiding a teddy bear and send it to your sphere telling them whoever finds the bear in the video gets a free coffee! Take a photo of your bicycle in front of the property and chat about the bike trail nearby.

## **Negotiating the Sale**

Be present when any and all earnest money agreements are presented.

Make sure there is documentation that the purchasers have been pre qualified/approved.

Review the contracts.

Keep open lines of communication and work toward a mutual agreement.

## **Follow up**

Keep in contact with the seller weekly.

Contact all brokers that show the property.

Advise them on any changes in the market that may affect the listing.

Keep them informed as to the sales of competing homes in the area.

Most real estate firms have forms to follow up on listings. Keep a log and list of what you have done and the date.

# Where Do Buyers Come From?

This is old but still rings true! Brokers have been using this kind of statistic for years. The buyers choose brokers. With the information available on the internet, there are many millennials that just do their looking online. But, to actually get the house, they call an broker they know or are referred to.

<b>Firm Name Recognition or Salesperson Contact</b> The buyer decided who to call to look at homes!	<b>40%</b>
<b>The "For Sale" Sign</b> The buyers found a home, often in their own neighborhood, that they liked!	<b>20%</b>
<b>Responded to an Advertisement or the Internet</b> They called about an ad, but they purchased another property! How does the web change this?	<b>18%</b>
<b>Came to an Open House</b> They came to see a house, but they purchased another property!	<b>8%</b>
<b>Referral or Relocation</b> Another party referred them to a company or an broker!	<b>7%</b>
<b>Bought an Advertised Property</b>	<b>3%</b>
<b>Bought an Open House They Saw</b>	<b>1%</b>
<b>Bought for a Combination of Other Reasons</b>	<b>3%</b>

Buyers usually compare roughly an average of only 15 to 25 homes before making a decision to buy. This doesn't mean they actually saw them.

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*Most often, buyers choose one of the first 3 homes they see.*

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# Market Time

The first 30 days of a listing period are the most critical marketing time. This is when the home gets the most exposure. Just about every tool the brokers have at hand is used during this time. There is nothing more powerful than the three letters next to a listing.... "NEW" Buyers are always looking. A new listing most often gets instant attention by a number of prospects. If it doesn't sell, no matter the market, then it might not be perceived as "hot."

Research shows that most homes that are competitively priced sell in the first month. Often if they are priced competitively the homes will sell within days of hitting the market as "new." This is because there are buyers out in the marketplace looking. If the new listing is "hot" they will know it based on properties that they have already seen!

**Homes Sold Within....**

<b>1 Month</b>	<b>40%</b>
<b>2 Months</b>	<b>7%</b>
<b>3 Months</b>	<b>7 %</b>
<b>4 Months</b>	<b>20%</b>
<b>5 Months</b>	<b>10%</b>
<b>6 Months</b>	<b>7%</b>
<b>7 Months</b>	<b>9%</b>

*Why do most homes sell in the first month?*

*What types of marketing do brokers do during the first month?*

*What types of marketing that are done in the first month cannot be repeated again?*

*Why is there a rise in the percentage of homes sold in the 4th month?*

*Why is there a rise in the 7th month?*

# How to Write a Successful Advertisement/ flyer/ website

Buyers look for when reading ads

Location	70%
Size and Number of Rooms	45%
Price and Terms	40%
Type of construction	33%
Condition or Appearance	20%
Age	17%
Type of Heating	17%
Basement?	8%
Size of Lot	6%
Details about features	4%

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*When we look at any properties for sale, we look at where it is, the size and whether it is affordable!*

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**Sell the property... not the potential buyers... as that could lead to a fair housing violation.**

# Write Ads that Sell

Use the AIDA method from all your old marketing texts!

**ATTENTION** Use the headline to attract the attention of the reader.

**INTEREST** Arouse interest in your opening sentence. Use emotional, economical or investment appeal.

**DESIRE** Create desire in the body of the ad by describing all the features of your home.

**ACTION** Impel action in your closing lines. Mention price and phone number. Create a sense of urgency.

## Have Full disclosure in any advertising!

With the advent of social media and internet advertising it is important to follow the Washington State Laws! You must disclose your name as the broker, the complete legal full name of the firm and do it within one click online! You also must not add any information on financing unless you include the APR according to Reg Z.

# Fair Housing

The Fair Housing Act outlaws almost every discriminatory notice, statement, and advertising that relates to the sale or rental of housing. This advertising rule applies even to those persons otherwise exempted from the Act. For the first two decades after 1968, there were few reported court cases involving discriminatory advertising. Beginning in the early 1970's, HUD issued Advertising Guidelines, which are now published in HUD's regulations.

The Fair Housing Act makes it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. The Fair Housing Act makes it unlawful to 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 shows an intention to indicate **any preference, limitation, or discrimination** because of race, color, religion, sex, handicap, familial status, or national origin. When advertising, bear in mind that you cannot use **ANY** words that are discriminatory in nature. **There is no complete list!**

## Seattle Times Case

A case was won against the Seattle Times newspaper where an ad said, "two blocks from St. Mark's cathedral." These words can include, but are not limited to:

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

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

## Other Words to Avoid

This list gives a sampling of words that may indicate a preference, limitation, or discrimination towards a member of a protected class. Remember that it is NOT the intent of the real estate broker, the copywriter, or the publisher. It is the EFFECT! Have you used any of these words? Able-bodied

Active living	Membership approval
Adult living	Mom
Adults only	Mother-in-Law
Agile	Newlyweds
Alcoholics	No play area
Bachelor	Non-smokers
Board approval	Number of children
Children or No children	Physically fit
Near Church	Private
Couple	Near Private school
Dad	Quality neighborhood
Desirable	Quiet
Discriminating	Quiet tenants
Employed	Responsible
Empty nesters	No retarded
Exclusive	Retire
Executive	No seasonal worker
Gentlemen's retreat	No Section 8
Grandma or Grandpa	Synagogue
Not for handicapped	Temple
Healthy only	Two people
Homogenous	No unemployed
Integrated	Walking distance
Kids	Young
Mature couple	
Mature persons	

# Washington Discrimination Law

Washington State Law in RCW 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, caste 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. 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. Sexual Orientation was added as a protected class in Washington State in 2007. Washington State recognizes same sex marriage.

## Local Fair Housing and Discrimination Laws

Cities and counties across the country are developing their own guidelines and laws. It is important to remember that the most laws in the county or city must be adhered to because often they include more stringent rules and a larger list of protected classes. Note the following list from the Puget Sound Area.

### King County

The protected classes in King county include:

- Race
- Color
- Religion
- Sex
- National Origin
- Disability & Guide Dog
- Parental Status
- Marital Status
- Age
- Sexual Orientation
- Section 8 (housing Subsidy)

### City of Seattle

The protected classes include:

- Race
- Color
- Religion
- Sex
- National Origin
- Disability
- Parental Status
- Marital Status
- Age
- Sexual Orientation
- Ancestry
- Political Ideology
- Section 8
- Caste

In addition to these, there are other jurisdictions that have discrimination laws.

- The City of Bellevue, Department of Community Development,
- The City of Tacoma, Tacoma Human Rights Department,
- The City of Spokane, Northwest Fair Housing Alliance
- The Fair Housing Alliance in Tacoma



# Closing Costs and Commission

How much will this sale cost?

## Sellers Net Proceeds

When listing a property, the listing broker needs to give the seller a rough estimate of the costs involved and the net proceeds available at the time of sale.

The costs can include, but are not limited to:

### **Title Insurance**

The amount is based on the purchase price of the property

In a typical real estate transaction, the seller pays for a title insurance policy for the buyer. This assures that the seller has marketable title.

The buyer pays for a title insurance policy for the lender. It assures their interest in the property. The lender typically does not want to be in second position behind any other liens or judgments.

### **Escrow Fee**

Typically, half the fee is paid by the seller and half by the purchaser. In Washington State escrow companies are licensed. Banks, title companies and attorneys do not have to be licensed. An escrow company typically holds deposits and completes the paperwork, and disburses funds prior to closing.

### **Recording Fee**

Records the satisfaction of the mortgage when the seller completes the sale. The documents for the sale are recorded in the county at closing.

**Excise Tax**

A tax based on the sales price. It varies by city and county. Typically the excise tax is paid by the seller.

**Brokerage Fees**

The commission paid to the real estate broker(s).

**Mortgage Interest**

The interest in the loan is paid in arrears. One months interest may be due at closing.

**Buyers Costs**

The agreement may call for the seller to pay some of the buyer's costs including discount points.

## The Commission

Real estate brokers belong to one of the largest groups of licensed professionals. The most valuable item they have to protect and defend is their reputation. The only thing they have to sell is their service. They are most often paid only when they actually complete a successful sale. It is in their best interest to see that all parties are dealt with fairly because satisfied clients can become repeat clients or send others to the brokers.

The commission is the compensation for the performance of services related to a real estate transaction. To be entitled to receive a commission in Washington, a real estate broker must be licensed in the state. The seller and buyer's agents may only receive payment of the commission if the agreement was in writing.

**Commission Amount**

The amount of commission is always negotiable. It is not set by laws, multiple listing services, real estate broker groups, or professional associations. The commission amount is negotiable between all the parties.

Brokers cannot fix or set uniform commission rates. The commission must be negotiable due to anti-trust laws. Real estate brokers and brokers from different companies are not to discuss commission rates or it could be construed as price fixing, a serious crime. This includes casual or what might be considered *innocent* discussions about the rates their brokers are charging.

When you are going to lunch with other brokers or at a real estate conference, do not mention commission that you earned or charge.

The broker of a real estate firm can establish the commission rates that the brokers in the firm charge.

## **Payment of Commission**

All commissions in a real estate firm are paid to the firm and not directly to the brokers. The salesperson may only receive a commission from the broker that he/she is licensed under. A real estate broker, whether they are a managing broker or they have incorporated, CANNOT receive a check for payment of brokerage services from anyone except their licensed broker!!!

The listing agreement should specify the amount and the time the commission is due and payable.

The broker is due the commission when all the terms of the purchase and sale agreement are satisfied. This may be after conditions specified on the agreement are met.

Be careful paying a finder's fee or "commission" to someone as a referral fee. Discuss this with your designated broker.

## **Relationship of Value and Commission**

When preparing the market analysis report, bear in mind that the value of the home is determined by analyzing similar properties. The value is not related to the amount of commission paid on the sale. The commission is not a part of the public record.

# Listing Agreements Discussion

**It is important to know the answer to the following questions. If you have any concern about the answer, please contact the school or your broker.**

*When do you earn a commission?*

*What if the seller breaches the contract?*

*What if the seller gets ill and dies during the period of the listing contract? Does it terminate?*

*What if you find a buyer and the seller decides not to sell?*

*What if you find a buyer and the buyer doesn't qualify and the sale fails?*

*What if the seller sells the property to a relative during the listing period?*

*What if the seller sells 30 days after the listing expires to someone who saw it while it was listed?*

*What if only the husband signs the listing agreement?*

*What if the house burns down during the listing period?*

*What if the seller removes the stove when they move?*

*What if the seller wants to keep the chandelier?*

*What if the seller wants to list the home 20% higher than your market value range?*

*What if the seller has an appraisal that is higher than the range of market value you gave him?*

*What if you change from one real estate firm to another during the testing period?*

*What do you say to a seller when the house has an offer on it within 48 hours of being listed?*

# Most Commonly Asked Questions about Listings

(Natalie's best answers today!)

These are typical questions brokers have about listings. If you have a question about a listing, make sure you direct it to your designated broker for the correct answer.

Where can I find more listings? What is the best prospecting method?

*Ask for referrals from everyone. Choose three prospecting methods and stick to them!*

How can I convince the seller to reduce the price? The property has been listed for 3 months. The seller says that it is a unique property and I need to be more patient.

*The market statistics vary per area and three months may be a long time or short. But, an overpriced listing will NEVER pay your bills. It will only sap your energy and money. Provide the seller with market statistics and information sold properties during the past 3 months.*

I have a condo listing that is priced well. It is right in the range of the other condos that have sold recently, but this one does not have activity and no offers.

*There are numerous reasons a property does not sell but primarily the market and the seller's motivation and .... price.*

The sellers say that they have to get \$500,000 for their property. They need that much to make the move to the new house. Their property is only worth about \$475,000. What do I say to them?

*Can I sell your \$8,000 Ford truck in the driveway for \$12,000? What if I put a full page ad in the Auto Magazine or park it in a visible location? Will I ever get \$12,000 for an \$8,000 truck?*

The sellers feel it is necessary to interview other real estate brokers before they choose whom to list with. What can I respond with?

*Many sellers feel that it is important. Make sure that you ask them if they have any reservations about listing with you before you leave, so you can try to answer the objections they might have.*

The last broker the sellers met with told them that they could get much more money for their home than I told them. They say that they want to list with the broker that can get them the most money.

*Real estate brokers are incredible sales people, but they have no control over the price that the buyers will pay for the property!*

The seller says that she wants to sell to a nice family because her neighbors in the cul-de-sac will really appreciate that. Besides, the house is in a perfect family neighborhood.

*Familial status is one of the protected classes under the Federal Fair Housing Laws. It is the same as saying the same thing about race, color, religion, sex, national origin, or handicap. And besides, how do we know that that "perfect" family isn't "perfect?" I haven't seen one yet! The seller needs to choose the Paper and not the People.*

The seller wants to negotiate the commission. They want me to reduce my commission by a half.

*The commission is often decided by the designated broker of the real estate office. Say you understand and agree that it seems to be high, but in fact it is broken down and pays many costs and fees.*

The seller is so excited about the offer coming in on the house that she drinks several beers to calm down. Do I present the offer?

*Do not be the person that purchases and provides the beer to the seller! If the seller has had too many and is obviously intoxicated, then it would be foolish to put a pen in her hand to sign!*

# Conclusion

When you have a listing, you have a contract from sellers whereby they agree to pay you commission when you bring an offer from a ready, willing and able buyer on their terms.

The motivation the seller has for selling will often vary per the market. The market conditions, the interest rate, and the weather have little or no impact on the reasons your past 5 sellers decided to list their property for sale. When you are asked if they are motivated...the answer is "yes!" It is confidential why they are selling. "The sellers have moved, are moving, or planning to move."

Your primary responsibilities as a real estate broker representing the seller include: Advise on pricing and market conditions, maintain agency relationship, market the property, negotiate the sale, and follow the sale through escrow.

The most difficult part of the brokers responsibility is to translate what the buyers and sellers agree upon into contract form.

New listing agreements include consensual dual agency. Understand what that means.

There are no strict rules when preparing a market analysis and estimating value. There are guidelines to follow based on principles the appraisers follow.

The seller must disclose all material defects in the property. What does that mean?

The most powerful marketing tool is the Multiple Listing Service. There are many other tools that are used to market properties.

It is important to provide the seller with a detailed estimate of the costs to sell.

The commission is always negotiable between the seller and the broker.

# Signing Listing Agreements

## Quiz

### Section 1 Listing /Agency

1. As a listing broker you have a contract to market property and get paid \_\_\_\_\_.
2. Your market area encloses all your future listings. True/ False
3. As a listing broker, you can only control the number of houses \_\_\_\_\_ sell.
4. The market is generally \_\_\_\_\_ driven.
5. The reason a seller lists can be \_\_\_\_\_ if it doesn't affect the sale.
6. No matter what condition the market, there will always be buyers and \_\_\_\_\_.
7. A listing broker should advise, \_\_\_\_\_, and make recommendations.
8. As a listing broker, your "product" is \_\_\_\_\_.
9. Licensees must provide a pamphlet on the Law of Agency prior to a party \_\_\_\_\_ an agreement.
10. Licensees must account in a timely manner for all \_\_\_\_\_ and property received from a party.
11. A seller's broker must make a good faith and continuous effort to find a \_\_\_\_\_ for the property.
12. A seller's broker must advise the principle on matters beyond his or her \_\_\_\_\_.
13. A licensee can be a dual broker only after written consent of both parties which includes terms of \_\_\_\_\_.
14. The seller's broker discloses agency in the \_\_\_\_\_ agreement.
15. A licensee must account in a timely manner for all \_\_\_\_\_ and property received.



## Section 2 Listing Agreements

16. A listing agreement is an employment contract between a broker and a \_\_\_\_\_.
17. To enter into a valid contract a person must be \_\_\_\_\_ years old.
18. According to the statute of \_\_\_\_\_ all real estate contracts must be in writing.
19. A listing agreement whereby the seller pays the listing broker regardless of who procures the buyer is a \_\_\_\_\_ listing agreement.
20. If the broker dies or closes the business the listing agreement \_\_\_\_\_.
21. A clause that provides for the payment of commission after termination of the listing if certain conditions are met is a \_\_\_\_\_ clause.
22. When listing a property it is important to obtain a full \_\_\_\_\_ description.
23. The last \_\_\_\_\_ will often have the names of the parties in title.
24. If a married couple occupies a house and lists it for sale and only one name is on the deed, is it necessary to get the signatures of both husband and wife? yes/ no (circle one)
25. An example of personal property that often remains with the home is \_\_\_\_\_.

Answer the following questions based on the listing agreement most commonly used in your office.

26. If the seller finds a buyer through his own efforts, does he owe the commission to the broker on this type of listing? Yes / No
27. This agreement provides for a \_\_\_\_\_ month safety clause.
28. Does the listing agreement have a clause that gives the broker permission to market the property through a multiple listing service? Yes/ No
29. Does the listing agreement disclose dual agency? Yes / No

30. Is there a provision on the listing agreement to share commission with a real estate broker from another company. Yes/ No

### Section 3 Ownership/ Disclosure

31. Only the \_\_\_\_\_ or \_\_\_\_\_ may sign or make changes to a listing.

32. The \_\_\_\_\_ will often show the owner of the property.

33. If there are four owners of the property, how many signatures are needed on the listing agreement? \_\_\_\_\_

34. A notarized Power of Attorney only authorizes the real estate broker to sign for the parties. True / False

35. The real estate broker does not have to have a copy of the Power of Attorney in the listing file. True / False

36. A complete legal description for the property can be found on the \_\_\_\_\_.

37. The street address is sufficient for a property description on the listing agreement. True / False

38. \_\_\_\_\_ will never hold up in a court of law.

39. The condition of the property directly affects the \_\_\_\_\_.

40. The property information disclosure law only applies to properties that are listed in the MLS. True / False

41. \_\_\_\_\_ fraud is when an broker intentionally misrepresents a material fact.

42. An broker SHOULD/ SHOULD NOT consult their broker before taking a listing on a property that was the scene of a crime and the sellers do not want to disclose.

43. The basement has flooded every other year but the sellers assured the broker that the drain tiles under the downspouts they installed last week will correct the problem. The sellers do not want to disclose the flooding. The broker SHOULD/ SHOULD NOT consult their broker before listing.

44. The seller is a representative of an estate and therefore is \_\_\_\_\_ from filling out the Property Information Disclosure form.

45. The Property Information Disclosure Form is a national form used throughout the country. True / False

## Section 4 Marketing Listings

46. There is no more effective way to market listings than through the \_\_\_\_\_.
47. \_\_\_\_\_ your listings carefully.
48. It is important to list only properties that will successfully \_\_\_\_\_.
49. The primary factor in getting a property sold is the \_\_\_\_\_.
50. If a property isn't priced competitively, then it most likely will not \_\_\_\_\_.
51. The high cost of marketing efforts in the real estate industry \_\_\_\_\_ results in higher prices or faster sales.
52. Sellers often have an \_\_\_\_\_ attachment to the property.
53. The sellers objective is to get the most \_\_\_\_\_ possible.
54. Most buyers come because of firm name \_\_\_\_\_ or salesperson contact.
55. Approximately \_\_\_\_\_% of homes sell in the first month.
56. The most important feature the buyers look for when reading an ad is \_\_\_\_\_.
57. AIDA is an acronym for Attention, Interest, \_\_\_\_\_, and Action.
58. The seven protected classes under the Federal Fair Housing Law are Race, Color, Religion, Sex, National Origin, Familial Status, and \_\_\_\_\_.
59. An ad that read "Near St. Jude Catholic Church" WOULD / WOULD NOT violate the Federal Fair Housing law.
60. Write the word that DOES NOT violate the Federal Fair Housing Laws.  
COUPLE, KIDS, BACHELOR, ORIENTAL, AGILE, CONTEMPORARY, EXCLUSIVE, INTEGRATED.

## Section 5 Closing Costs and Commission

61. The seller pays for a title insurance policy for the \_\_\_\_\_.
62. The buyer pays for a title insurance policy for the \_\_\_\_\_.
63. The seller may have to pay one month of the \_\_\_\_\_ on their mortgage loan.
64. An escrow company in Washington State must be \_\_\_\_\_.
65. The amount of real estate commission is always \_\_\_\_\_.
66. The broker of a real estate firm can establish the \_\_\_\_\_ that the brokers charge.
67. To avoid price fixing, the MLS does not publish the total \_\_\_\_\_ only the amount paid to the cooperating brokers.
68. All commissions are paid directly to the \_\_\_\_\_.
69. The broker can only receive commission from the \_\_\_\_\_.
70. The listing commission is earned according to the terms on the \_\_\_\_\_ agreement.

### Answer Sheet... Signing Listing Agreements

1		35	
2		36	
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I attest that I have read the materials and have answered the questions.

**Date Course Started** \_\_\_\_\_ **Date Course Completed** \_\_\_\_\_  
**Print Name** \_\_\_\_\_ **Company** \_\_\_\_\_ **Signature** \_\_\_\_\_ PROFESSIONAL Direction,



## Mandatory Evaluation Signing Listing Agreements

Did you read the material in the booklet on this date? YES / NO  
 Did you complete the quiz for the course and use answer sheet? YES / NO  
 Did you fill out and sign this form? YES / NO  
 Did you pay using the link on website. YES / NO

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

A "clock hour" according to the state is 50 minutes.. So this 5 hour class should take in the area of 4 hours give or take about 10-20 minutes. How long did it take you to complete the course? \_\_\_\_\_

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

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 Why?

## Signing Listing Agreements

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

Thanks for taking this class!

*Natalie Danielson Professional Direction* EMAIL: [clockhours@gmail.com](mailto:clockhours@gmail.com)