

PROFESSIONAL *Direction*



**2024-2025 Residential Focus**

# **Core Curriculum**

**By Natalie Danielson, Angie DeArth and Ken Sax**  
Required Current Issues course for all Washington State Licensees

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**www.clockhours.com**

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



***Please Read this First! Thanks!***



## **Clockhours by Email**

1. You will be provided with a booklet of with the class material here in a pdf format.
2. The course has been divided up into sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
3. ***Print out quiz and Answer*** the questions. You can read the material on any computer or cell without a password or sign in,
4. If you have any questions regarding the material or the questions, don’t hesitate to email Natalie Danielson.
5. ***Scan and Email*** Quiz and Evaluation to Professional Direction. [clockhours@gmail.com](mailto:clockhours@gmail.com) You most likely have a scanner on your cell phone!
6. The certificate will be emailed ASAP after receipt of quiz and evaluation.

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

Thanks!

*Natalie Danielson*

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# 2024-2025 Core Curriculum Current Issues

## Residential Focus

### Curriculum

<p><b>1</b> <b>45 min</b></p>	<p><b>Legislative and Legal</b></p>	<p>A. Reforming WA Agency Law          Agency Law Pamphlet          Brokerage agreements with sellers and buyers          Compensation forms</p> <p>B. Legislative Updates          Future listing Contracts          Landlord tenant issues          Military and spouse          Development and GMA          Affordable Housing</p>
<p><b>2</b> <b>45 min</b></p>	<p><b>Forms</b></p>	<p>Specific Form Use          Evidence of Funds          Inspection Addendum          Inspection Response          Early or delayed occupancy          Earnest Money          New forms in 2023</p>
<p><b>3</b> <b>30 min</b></p>	<p><b>Business Practices</b></p>	<p>A. Broker responsibilities when in management position          B. Multiple Offer Situations          C. Transaction Coordinators</p>
<p><b>4</b> <b>45 min</b></p>	<p><b>Top violations for Brokers</b></p>	<p>DOL Violations report          A. Recordkeeping          B. Trust Accounts          C. Broker Responsibilities          D. Advertising          E. Failure to cooperate with DOL          F. Unlicensed Activity          Risky Practices          Noted risky practices that could be violation of laws</p>
<p><b>5</b> <b>15 min</b></p>	<p><b>Professional Standards and Safety</b></p>	<p>A. Professional Cooperation          B. Safety issues for Brokers</p>

# Core Curriculum Current Issues

## Residential Focus 2024-2025

By Natalie Danielson

The Core Curriculum is a required course for every real estate broker renewal every two years. The curriculum is decided by the Department of Licensing with updated material every two years. This class focuses on major sections that were determined to have an impact on the business of the real estate broker and the consumer. This is the residential focus that includes forms, current forms, Business practices, and top violations.

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

### Course Objectives

**According to the required curriculum, a result of taking this course the real estate licensee will be able to:**

- Identify and discuss forms that are currently used by agents in the field.
- Identify and describe common concepts relating to current legislation.
- Identify and describe common concepts relating to best practices and professional standards.

# Legislative and Legal Updates

## Agency Law Changes

### Changes affecting the Law of Agency effective Jan 2024

Brief Summary of Senate bill SB 5191as passed and is effective January 2024

Requires a written services agreement between a real estate firm and a buyer or seller. And landlord/tenant.

Requires disclosure of certain information relating to real estate brokerages, such as compensation terms.

Provides that certain legal duties of real estate brokers apply to all parties to the transaction.

Modifies the Washington State Real Estate Brokerage pamphlet to include changes to the law and improvements in readability.

The Law of Agency creates a presumption of buyer agency. That means that when a buyer walks into a real estate company, for example, the broker is “presumed” to represent the buyer at the time that the buyer performs “real estate brokerage services.” A written agreement is required by the law to represent the buyer. There are a number of reasons why a written agreement with the buyer can clear up any confusion, especially in the area of representation and compensation.

The compensation paid to the buyer’s agent has typically come from the seller’s costs at closing. Though it is negotiable, the compensation for the buyer is seldom negotiated by the buyer’s agent. The compensation amount paid to the buyer’s agent will now be disclosed on the NWMLS. In some cases, there will be sellers who elect to pay the buyer’s a commission or offer no commission at all. This is documented on the sellers agreement. Commission can be negotiated by both parties.

### Why have a written Brokerage Agreement with a Client?

A written Brokerage Services agreement with a client:

- Discloses the agency relationship and the term with the client in writing.  
It is important that the clients clearly understand the agency relationship. The default term is 60 days, but a different term, shorter or longer, can be agreed to in writing. (Watch for scammers that may put very long terms.)
- Affirms that the agent has given the clients a copy of the Consumer Pamphlet on the Law of Agency.

The way to document that the buyer has received the pamphlet is for the client to sign the Buyer Brokerage Agreement.

- Gives the buyer and the seller written consent for *limited* dual agency.  
If a broker could possibly show an inhouse listing, for example, the broker must have the buyer understand dual agency and get a copy of the pamphlet. This is documented on a Buyer Brokerage Agreement and a listing agreement. Limited dual agency must be agreed to in writing.
- Details terms of compensation.  
How are the brokers to be paid? How much does the buyer's agent get paid? The NWMLS discloses the commission paid by the seller for the buyer's agent. If that commission is less than what the buyer's agent requires by contract with their firm, less than what will cover their time and expenses, or is nothing, then the buyer can negotiate the payment only with a Buyer Brokerage Agreement.
- Puts commission in writing if there is no listing agreement.  
If a buyer elects to purchase a house that is not listed in the NWMLS, this commission section details the amount of commission that the buyer agrees to pay to compensate their agent. If a property seller refuses to agree on paper in a listing or as a for sale by owner, to pay a commission, the buyer's agent is not required to show that property. If a broker wants to show a house that is for sale by owner, the broker must explain the agency law and brokers services contract.
- It has an attorney's fees provision so that if the broker is sued and wins, the other party is responsible for their attorney's fees.

## Buyer Brokerage Agreements

For years, real estate brokerage firms were only required to enter into written agreements with sellers, not buyers. Beginning on January 1, 2024, the Agency Law will require firms to enter into a written "brokerage services agreement" with any party the firm represents, both sellers and buyers. This change is to ensure that buyers (in addition to sellers) clearly understand the terms of the firm's representation and compensation.

The services agreement with buyers must include:

- The term of the agreement (with a default term of 60 days and an option for a longer term); BE AWARE Scammers might try for very long terms!!!
- The name of the broker appointed to be the buyer's agent.
- Whether the agency relationship is exclusive or non-exclusive.
- Whether the buyer consents to the individual broker representing both the buyer and the seller in the same transaction (referred to as "limited dual agency");
- Whether the buyer consents to the broker's designated broker/ managing broker's limited dual agency.
- The amount the firm will be compensated and who will pay the compensation; and
- Any other agreements between the parties.

## **Buyer's Brokerage Services Agreement can be exclusive or non-exclusive.**

Can be either exclusive or non-exclusive for a given period to protect the broker commission.

### **Exclusive Agreement**

This would be like the idea of an exclusive listing agreement. An exclusive buyer agency agreement binds the buyer to purchase any property with the buyer's agent. It includes during a period and within certain boundaries.

### **Non-Exclusive**

A non-exclusive agreement means that any property information on potential listings for sale that a buyer's agent provides to a buyer, would require a payment of commission if the buyer decides to buy one of those properties during a time period.

## **How to use a Brokerage Services Agreement?**

Real estate brokers in Washington state seem to avoid using a Buyer Brokerage Agreement. A listing agreement is also a Brokerage agreement. With the disclosure of buyer's agent compensation to the sellers and the buyers, the real estate broker may be in a position to discuss and negotiate commission to get paid. This will require the use of the Buyer Brokerage Agreement.

## **Must be signed "as soon as "reasonably practicable."**

A Buyer Agency Agreement has been available in Washington State for decades. It is not a new form, though it has recently been changed.

The agreement must be presented and signed "AS SOON AS REASONABLY PRACTIBLE." This means it has a sense of urgency or immediacy. It needs to establish the relationship before or immediately after providing real estate brokerage services.

Examples of when you would present the buyer brokerage services.

- If you are qualifying a buyer and discussing properties that might be suitable or available.
- When you are meeting a buyer for the first time to determine if you can help them.
- When you meet a buyer at an open house and they want to write up an offer.
- When a buyer calls you and wants to meet at a house for sale. As soon as you have shown the home the discussion goes forward.

The Buyer Brokerage services agreement affirms that you have presented a copy of the law to the consumers.

# Seller Brokerage Agreements

## The Listing Agreement

A listing agreement is a Seller Brokerage Agreement. It details the requirements of the Brokerage agreements.

1. The term (duration) of the agreement; WA law restricts listings to be 5 years or less.
2. Name of the broker(s) appointed to act as an agent for the principal, Disclosing the agency relationship.
3. Whether the agency relationship is exclusive (which does not allow the principal to enter into an agency relationship with another firm during the term) or nonexclusive (which allows the principal to enter into an agency relationship with multiple firms at the same time); Listings in the MLS are exclusive right to sell listings.
4. Confirms that the seller understands and consents to limited dual agency. If a broker could show an inhouse listing, for example, the broker must have the buyer understand dual agency and get a copy of the pamphlet. This is documented on a Buyer Brokerage Agreement. Dual agency must be agreed to in writing.
5. The terms of compensation are documented.

A real estate firm and broker must enter into a written brokerage services agreement with a seller to establish an agency relationship. This is the listing agreement. The firm will then appoint one or more brokers to be agents of the seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers are also agents of the seller.

## Landlords/ Tenants Brokerage Agreements

The Brokerage agreement is also required to be signed by consumers looking for properties to rent. When a broker is showing property or having a client sign a rental agreement to market the property, it falls under the Brokerage agreements.

## The Required Agency Law Pamphlet

When a consumer is presented with the Brokerage Agreement, they must also receive a Consumer Pamphlet on the Law of Agency. This pamphlet has been rewritten from the past to be more consumer friendly. It is in a narrative that is easy to read.

The format of the new pamphlet is not dictated by law. You must provide the information to the consumer, but it can be in any reasonable size or design. You are not required to have a pamphlet created by the MLS or the Realtors.



# Required Brokerage Agreements

Discuss the required agreements and the Consumer pamphlet and how to present them to the consumer.

## Real Estate Brokerage in Washington Consumer Pamphlet

RCW 18.86 section 13 Effective January 2024

### Introduction

This pamphlet provides general information about real estate brokerage and summarizes the laws related to real estate brokerage relationships. It describes a real estate broker's duty to the seller/landlord and buyer/tenant. Detailed and complete information about real estate brokerage relationships is available in chapter 18.86 RCW. If you have any questions about the information in this pamphlet, contact your broker or the designated broker of your broker's firm.

### Licensing and Supervision of Brokers

To provide real estate brokerage services in Washington, a broker must be licensed under chapter 18.85 RCW and licensed with a real estate firm, which also must be licensed. Each real estate firm has a designated broker who is responsible for supervising the brokers licensed with the firm. Some firms may have branch offices that are supervised by a branch manager and some firms may delegate certain supervisory duties to one or more managing brokers.

The Washington State Department of Licensing is responsible for enforcing all laws and rules relating to the conduct of real estate firms and brokers.

### Agency Relationship

In an agency relationship, a broker is referred to as an "agent" and the seller/landlord and buyer/tenant is referred to as the "principal." For simplicity, in this pamphlet, seller includes landlord, and buyer includes tenant.

### For Sellers

A real estate firm and broker must enter into a written services agreement with a seller to establish an agency relationship. The firm will then appoint one or more brokers to be agents of the seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers are also agents of the seller.

### For Buyers

A real estate firm and broker(s) who perform real estate brokerage services for a buyer establish an agency relationship by performing those services. The firm's designated broker and any managing broker responsible for the supervision of that broker are also agents of the buyer. A written services agreement between the buyer and the firm must be entered into before, or as soon as reasonably practical after, a broker begins rendering real estate brokerage services to the buyer.

## **For both Buyer and Seller - as a Limited Dual Agent**

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

- (1) When the buyer and the seller are represented by the same broker, in which case the broker's designated broker and any managing broker responsible for the supervision of that broker are also limited dual agents; and
- (2) when the buyer and the seller are represented by different brokers in the same firm, in which case each broker solely represents the principal the broker was appointed to represent, but the broker's designated broker and any managing broker responsible for the supervision of those brokers are limited dual agents.

## **Duration of Agency Relationship**

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

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

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

## **Written Services Agreement**

A written services agreement between the firm and principal must contain the following:

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

## **A Broker's Duties to All Parties**

A broker owes the following duties to all parties in a transaction:

- (1) To exercise reasonable skill and care.
- (2) To deal honestly and in good faith.
- (3) To timely present all written offers, written notices, and other written communications to and from either party.
- (4) To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party. A material fact includes information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a transaction or operates to materially impair or defeat the purpose of the transaction. However, a broker does not have any duty to investigate matters that the broker has not agreed to investigate.
- (5) To account in a timely manner for all money and property received from or on behalf of either party;
- (6) To provide this pamphlet to all parties to whom the broker renders real estate brokerage services and to any unrepresented party.

(7) To disclose in writing who the broker represents; and

(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.

## **A Broker's Duties to the Buyer or Seller**

A broker owes the following duties to their principal (either the buyer or seller):

(1) To be loyal to their principal by taking no action that is adverse or detrimental to their principal's interest in a transaction.

(2) To timely disclose to their principal any conflicts of interest.

(3) To advise their principal to seek expert advice on matters relating to the transaction that are beyond the broker's expertise.

(4) To not disclose any confidential information from or about their principal; and

(5) To make a good faith and continuous effort to find a property for the buyer or to find a buyer for the seller's property, until the principal has entered a contract for the purchase or sale of property or as agreed otherwise in writing.

## **Limited Dual Agent Duties**

A limited dual agent may not advocate terms favorable to one principal to the detriment of the other principal. A broker, acting as a limited dual agent, owes the following duties to both the buyer and seller:

(1) To take no action that is adverse or detrimental to either principal's interest in transaction.

(2) To timely disclose to both principals any conflicts of interest.

(3) To advise both principals to seek expert advice on matters relating to the transaction that are beyond the limited dual agent's expertise.

(4) To not disclose any confidential information from or about either principal; or

(5) To make a good faith and continuous effort to find a property for the buyer and to find a buyer for the seller's property, until the principals have entered a contract for the purchase or sale of property or as agreed otherwise in writing.

## **Compensation**

In any real estate transaction, a firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between firms. To receive compensation from any party, a firm must have a written services agreement with the party the firm represents (or provide a "Compensation Disclosure" to the buyer in a transaction for commercial real estate).

A services agreement must contain the following regarding compensation:

(1) The amount the principal agrees to compensate the firm for broker's services as an agent or limited dual agent.

(2) The principal's consent, if any, and any terms of such consent, to compensation sharing between firms and parties; and

(3) The principal's consent, if any, and any terms of such consent, to compensation of the firm by more than one party.

## **Short Sales**

A "short sale" is a transaction where the seller's proceeds from the sale are insufficient to cover seller's obligations at closing (e.g., the seller's outstanding mortgage is greater than the sale price). If a sale is a short sale, the seller's real estate firm must disclose to the seller that the decision by any beneficiary or mortgagee, to release its interest in the property for less than the amount the seller owes to allow the sale to proceed, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including real estate firms' compensation.

NEW SECTION. Sec. 12. This act takes effect January 1, 2024.

Passed by the Senate April 14, 2023. Passed by the House April 11, 2023.

Approved by the Governor May 4, 2023. Filed in Office of Secretary of State May 5, 2023.

# Legislative Updates

## Bills Passed by the WA State House and Senate regarding Real Estate

### Future Listing Contracts

SB 5399: "Future Listing Contracts" grant an exclusive right to list residential real estate for sale in the future with includes, but is not limited to, any document recorded in the county where the real estate is located relating to the contract including the contract itself, a memorandum concerning the contract or a deed of trust to secure the terms of the contract.

There are companies across the US that are using call centers and contacting people with equity in their home. In exchange for a couple thousand dollars, the homeowner agrees to sign some documents which include a "future listing contract" that expires in most cases after 40 years. (not a typo). When the homeowner goes to sell, the listing company is nowhere to be found. They find that there is a cloud on the title, sometimes as a "memorandum" that requires that the seller must pay usually 6% of the sales price to the future listing company at closing. So far, there has been no way to stop them so the legislature quickly passed this bill unanimously and it became effective May 2023. There are hundreds of homeowners that have already signed these contracts and cannot sell without paying tens of thousands of dollars to the questionable companies. This does not cover the homeowners who have already signed the contracts. The bill limits future listing contracts to no more than 5 years. An owner has ten days after entering into one of these contracts to provide a notice of cancellation which allows the owner to get out of the contract without penalty or further obligation. A future listing right purchase contract is prohibited from being used as a lien against real property.

The attorney general may bring action to enforce compliance with this section by making the provisions subject to the Consumer Protection Act.

If you find that a seller has a cloud on the title that may be in the form of a memorandum and they may have signed one of these future listing contracts, you should immediately have the owner contact an attorney prior to listing the property.

NOTE: The Real Estate Commission is to have a workgroup to examine practices used by real estate brokerage companies to market, establish, and enforce future listing right purchase contracts and to report back to the legislature by Dec 1, 2024, with findings and recommendations.

This law specifically states the "future listing contract." There are talks that a similar law should focus on the length of buyer brokerage agreements.

### Landlord/ Tenant Law changes

HB 1070: An EXEMPTION from the Residential Landlord-Tenant act when the buyer and seller agree that the seller can retain possession after closing if it is less than 3 months and the buyer does not accept rent, the house was not a distressed property, and the seller was represented by an agent or attorney at closing.

HB 1074: A landlord may not withhold a deposit from tenant for wear resulting from ordinary use of the property, for carpet cleaning unless it is beyond wear from ordinary use, for costs of replace of fixture if their condition was not reasonable documented in the move-in checklist, and in excess for the cost of repair when premises damaged beyond ordinary care.

### **Military licensing and Spouse employment.**

SHB 1009: The Dept of Licensing along with the DOH are required to implement legislation modifying the professional licensing procedures for military spouses. They must issue a license to a qualified military spouse within 30 days of application and receive a temporary license. The WA Dept of licensing announced at the November Commission meeting a person to serve as a liaison for military and their spouses.

### **Development and Growth Management Act**

a. HB 1042: Concerning the use of existing buildings for residential purposes.

When cities in WA update their comprehensive plan, they cannot impose certain restrictions on commercial or mixed use to restrict addition of housing is constructed in the building envelope.

e. HB 1110: Increasing middle housing in areas traditionally dedicated to single-family detached housing. This affects cities when updating their planning so that they will allow for greater density and develop more middle housing.

f. HB 1181: Improving the state's response to climate change by updating the state's planning framework when updating city and county comprehensive plans. It should include resiliency plans for climate impacts, greenhouse gas emissions from vehicle miles, and water system plans and the effect from extreme weather.

g. HB 1293: Streamlining development regulations. This focuses on the design review process and regulations including the requirement to have no more than one public meeting.

h. HB 1337: A city or county during their next comprehensive plan update must allow for ADU's within urban growth areas. The goal is to expand housing options by easing barriers to the construction and use of accessory dwelling units.

SB 5290: City planning under the Growth Management Act must respond to permit applications in a timely manner. Concerning consolidating local permit review processes. A city or county with an Urban Growth Capacity report must provide an annual performance report.

SB 5058: Exempting buildings with 12 or fewer units that are no more than two stories from the definition and requirements of multi-unit residential building

SB 5412: Under the Growth Management act. The Site Environmental Polica act expands the infill development exemption to include housing development. Certain project actions propose to develop one or more residential housing units within the urban growth area and meet certain criteria are exempt for SEPA. Reducing local government's land use permitting workload

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## **Affordable Housing**

SB 5045: Incentivizing rental of accessory dwelling units to low-income households. A county with a population of 1,500,000 or more may choose to exempt an ADU from property tax. It is a rental property for low-income households with adjusted income at or below 60% of median income for the county.

HB 1046: Expanding housing supply by supporting the ability of public housing authorities to finance affordable housing developments by raising the median income limits.

SB 5258: Increasing the supply and affordability of condominium units and townhouses as an option for homeownership. Requires that the association created after the date of this act must include a written report from a construction defect professional in a defect claim. Escrow requirements are limited to earnest money deposits for the purchase of a common interest community property. The amount of deposit funds used for construction may not exceed 5% of the price. Down payment assistance from excise tax and can only be used toward a person's down payment assistance loan by the HFC.

# Specific Form Use

## Evidence of Funds

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

According to the Dept of Licensing, the Evidence of Funds form should be required on all offers to identify sources of funds especially contingent funds Purchase and sale agreements that include funds other than a mortgage loan should include the Evidence of Funds form.

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

*What does it mean “evidence of funds” or “proof of funds” from a buyer? Sellers often require proof of funds from a homebuyer when that buyer is obtaining a loan. Most sellers typically want to see evidence that the buyer has a down payment and/or closing costs before agreeing to sell to that buyer. A preapproval letter isn’t always enough. A buyer’s word is not enough.*

Every closer will tell you that all “cash” buyers are not created equally. When we see “cash” buyer we typically don’t believe that it will really end up being cash. Simply put, a cash buyer is someone who has cash on hand to close. Many cash buyers consider themselves to be cash buyers but are not. The following are some of the cases we have seen in the past where it really is not a “cash” purchase:

1. Buyer is obtaining a loan from “private banking” branch of their bank – they really don’t feel this is a loan. It is cash they can get any time in their minds.
2. Buyer is borrowing money from relatives secured by the property. Often relatives will require the closer to prepare the note and trust deed and record.
3. Buyer is refinancing another property to raise the “cash”.
4. Liquidating funds from a retirement account
5. In the process of selling stocks or mutual funds.
6. Buyer is getting a gift of the down payment.
7. Hard Money Loan. As the title states, Hard Money LOAN!!! It’s a loan. Said differently, these are contingent funds!!!

Example:

A buyer shows that they are putting a 20% down payment on the property. The listing agent/seller counter with an Evidence of Funds form which compels the buyer to show evidence that they have the funds or risk being terminated.

A buyer could be a “cash” buyer. The listing agent/seller counters with the Evidence of Funds form to compel the buyer to “show me the money” or risk being terminated.

It would be a best practice for the listing agent/seller to request the form and document that it was requested. Buyer broker must educate the buyer when using this paragraph as to the consequences stated in paragraph 4 should the funds mentioned not be available. The buyer would be in default. The seller may be entitled to remedies. Document any conversation about this issue.

## Inspection Addendum

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

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

### **Inspection Contingency.**

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

**Inspection Report.** The Buyer is prohibited from providing the inspection report, or portions of it, to Seller, unless Seller requests otherwise.

There are three provisions that the seller can choose from to receive all or part of the inspection report.

1. Seller requests that Buyer provide the inspection report to the seller.
2. If buyer requests repairs or modifications to the Agreement, seller requests that Buyer provide only the portions of the inspection report related to the requested repairs or modifications to Seller.
3. If Buyer provides notice of additional inspections pursuant to Paragraph 5. Seller requests that Buyer provide a copy of the inspector's recommendations for additional inspections to the Seller.

If none of the boxes are marked at the time of the purchase and sale agreement, then.

If the seller has asked for recommendations for inspectors additional inspections then all the buyer broker can only give the few words that recommends an additional inspection. Do not provide the photos or any portion of the report or documentation that is in the inspection.

### **Seller Consent.**

When seller consents on the purchase and sale agreement to a copy of the inspection report or some portion, then it is a DEMAND and the buyer is compelled to do so.

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

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

If the buyer's inspector recommends additional inspections, the buyer can only order those inspections. The buyer cannot order additional inspections.

### **Paragraph 5 Waiver of Contingency by Buyer.**

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



# Inspection Response

## **Know the changes and new language on the inspection contracts.**

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

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

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

## **What if seller requests it?**

If seller requests a copy of the report. Make sure that you have WRITTEN instructions from the seller to provide the report. The new statewide Form 35C has been created for this.

## **Inspection report identifies problems.**

If a buyer is triggering the Additional Inspection Provisions, then the buyer must deliver a page of the buyer’s inspection report where the need or recommendation to seek additional inspections of buyer’s property. This was revised July 23. The buyer only has to deliver “inspector’s recommendation” if Seller requests it. Otherwise, the Buyer is to only deliver Form 35R indicating Buyer is exercising their right to conduct a secondary inspection. And it must be emphasized that everything other than inspector’s recommendation language is to be redacted before delivering to Seller.

## **What if there is wrongful deliver of the inspection report?**

If a buyer delivers to the seller a copy of the buyer’s inspection report without seller’s request, then the buyer would have waived their inspection contingency. is in breach of contract. (they’re not in breach...they just waived their contingency)

## **What is the remedy for that breach?**

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

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

## **The benefit of the Form for the Brokers**

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

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

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

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

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

#### **How does it get done in the time frames identified?**

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

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

#### **How to provide for additional time?**

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

## **Early or Delayed Occupancy**

When a buyer allows the seller to occupy the property after closing, it is exempt from the Landlord Tenant act if it is less than 90 days.

The buyer cannot pay the seller rent, it cannot be a "distressed property," and the parties must be represented by an attorney or real estate broker at closing.

Your agency relationship, most likely, terminated at the time of closing. You need to be careful practicing law by advising clients either to offer a rent-back, a delayed occupancy, or on how to deal with a tenant that will not vacate.

If a seller gives the keys to a buyer prior to closing, it is not exempt under the new law changes.

The owner of the house may not have insurance that covers the property or the contents if they have agreed to let the buyer move in early or if the seller remains in the property after closing. The owners must have adjusted their homeowner's insurance.

Trying to evict a seller or buyer as a tenant can take many months. Legal requirements must be met from offering a repayment plan to Eviction Resolution Mitigation. If the seller or even the buyer was offered occupancy without rent, this can become more complicated because the rent must be negotiated in a repayment plan if they refuse to move out.

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

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

# Earnest Money

On the purchase and sale agreement under earnest money it says:

*Default: (check only one) \_\_\_ Forfeiture of earnest money or seller's election of remedies – What does this mean?*

Default – In the event Buyer fails, without legal excuse, to complete the purchase of the property, then the following provision, as identified in Specific Term No 8 shall apply:

- i. **Forfeiture of Earnest Money** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.
- ii. **Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) sue Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.

## Late delivery, what does it mean and do we have to do an addendum?

If earnest money is late, no addendum. The Department of Licensing even tells brokers don't do an addendum. Listing agents must communicate to Seller if earnest money has not been delivered when due and must inform seller, they could terminate until such time as earnest money is delivered. The Department of Licensing auditors do and will look for this communication.

## What the PSA says about earnest money when one party is in default

Usually, the default would be that of the Buyer to not deposit the earnest money in a timely manner. Therefore, listing agents should be monitoring if the earnest money was paid timely, then act on it based on their seller's instructions.

## How much can be forfeited?

On NWMLS form 21 line 173-174: That portion of the Earnest money that does not exceed five percent (5%) of the purchase price shall be forfeited to the Seller. But, the real estate firm and the broker is not the one to determine who receives the earnest money.

## Role of Real Estate Brokers

When a transaction goes awry, is not headed to closing, has a party that is not performing or breaching the contract ... then real estate agents must be very careful to know their responsibilities. A real estate broker is not in a place to determine or even negotiate the destination of the earnest money funds held in trust! Telling the buyer that the seller will not have the right to take the earnest money.... Or telling the seller to not worry because they will retain the funds in the trust is not part of your brokerage services. A client could be relying on your opinion when, in fact, you have no "power" to affect the outcome. Head straight to the Designated Broker to discuss the situation and how you should approach it.

## Interpleaders: What is it and how does it work?

From Wikipedia, the free encyclopedia:

**Interpleader** is civil procedure that allows a plaintiff to initiate a lawsuit to compel two or more other parties to litigate a dispute. An **interpleader** action originates when the plaintiff holds property on behalf of another but does not know to whom the property should be transferred. It is often used to resolve disputes arising under insurance contracts.

## **SEEMS SIMPLE.....RIGHT???......NOT!!!!**

The General Terms, Section B of the Residential Real Estate Purchase and Sale Agreement stipulates that in case of controversy, earnest money may be interpleaded with the courts. While this language has been a part of the standard contract for many years, few understand the process of interpleading earnest money. Today's topic is designed to assist you in determining when an interpleader is appropriate.

Before we discuss when an interpleader is appropriate, let's begin with what an interpleader is. An interpleader is an action whereby the closing agent deposits the disputed earnest money with the court clerk. To deposit the earnest money with the court clerk, the closing agent retains the services of an attorney to file the interpleader and deposit the earnest money with the clerk. The courts are then responsible for determining who gets the earnest money and the closing agent is out of the picture.

There are certain costs incurred with any court action. The filing fee for an interpleader here in Spokane County is currently \$230.00. Moreover, there is a cost for service of process. To get the purchaser and seller into court, they must first be "served" with notice of the lawsuit. The cost for service of process depends on the number of individuals involved.

Now that the earnest money has been interpleaded, what's next? Both purchaser and seller will need to retain their own counsel to represent them in court. While one can go to court without representation, it is important to remember that this IS NOT A SMALL CLAIMS COURT.

Every Judge handle interpleader action differently. Sometimes a court date will be set. Sometimes the judge waits for the client's attorneys to contact them. The court will hear the matter and determine whether the earnest money is to be retained by the seller or refunded to the purchaser. Either way, the allowable costs have already been deducted from the original amount.

So, where do we stand among all this talk of lawsuits? Interpleaders are not necessarily a cost-effective way of resolving disputes over earnest money. Attorney fees alone can quickly exceed the amount of the earnest money deposit. Costs are not just limited to the buyer and seller either. As I have recently learned, the court only allows \$750.00 to be held from the earnest money to pay the closing agents' costs.

By explaining to your client, the process and costs of such an action, they may be more likely to look for common ground and resolve a dispute without the need for litigation. Suggestions for dispute resolution that I have seen are to split the funds 50/50. I have also seen the parties choose a charity to donate the funds to— sometimes they will agree to this just because while they don't think the other party deserves the money, they are willing to give to a good cause.

I have checked with numerous attorneys in our area, and they tell me a typical Interpleader action costs around \$850.00, so it is always best to get a quote ahead of time. And that attorney is only doing the interpleader action for the "holder" of the money, is not representing either purchaser or seller.

If you are a real estate company and have a trust account, there is a form available on NWMLS form number 150, but it is always best to contact an attorney for advice if you choose to complete this form on Interpleading.

- Have you had any experiences with Interpleading?
- Have you heard any horror stories from other agents?

**NOTE: From buyer to broker: earnest money released to seller should be deposited to Escrow and then released to seller. This way there is a tract record of what occurred.**

# New Forms

## Information Verification period

The Information Verification provision gives the buyer boilerplate language to terminate the transaction if the buyer discovers a material inaccuracy in any of the seller's information and what is included in seller's information. This would be any information provided by the seller including Form 17, flyers etc. This gives the buyer the opportunity to verify if there were inaccuracies or even fraudulent statements by the seller. The buyer has the opportunity to terminate the transaction. According to the Legal hotline this is a protection for the seller since it gives the buyer time to verify anything that the seller has presented.

## Notice of Low Appraisal

Buyer "may" elect to deliver this notice to Seller per paragraph 5 on 22A. This will trigger the Seller to respond in one of 4 ways listed in the same paragraph. Buyer will then have an opportunity to respond to Seller's response unless Seller agrees to lower price to appraised value. Also, paragraph 5 is an ideal paragraph to show an unreasonable Seller when taking a listing. If Buyer doesn't elect to deliver this notice, this means Buyer will simply bring additional funds to the closing table.

## Notice of Appraisal Work Order

The buyer initiates this form when appraisal comes back at value CONTINGENT on specific work orders being completed before closing. Buyer will attach the appraisal and deliver to Seller.

## Sewer Inspection Addendum and Well Addendum Response

These forms are much more detailed. Read them carefully if you have a property that applies.

The Well addendum is to create a process for the parties (buyer and seller) to address any deficiencies buyer discovers on the well inspection. Prior to this form, the agents would have to use F34s, etc. and basically create the process. This form simply formalizes the process. It's important to note that we typically encourage agents to use the 22L&A (land and acreage addendum) in lieu of the well addendum. This form 22RN is only to be used with the well addendum.

## Included items on Purchase and Sale Agreement

The letter "S" has been added to items on paragraph 5, to include all the items. For example, if there are more than one dishwashers or stoves, the box now includes all of the items.

## Home Sale Contingency

In paragraph 2 the buyer is prohibited without sellers prior consent from selling their house to another buyer To change the closing date window of buyers transaction with the buyer that is less than 30 days or more than 45 days. This window was shortened in July 2023.

The seller's home sale will be three days after the contingency sale is closed.

You do not want the buyer to inadvertently waive the home sale contingency so watch the window for the closing of the contingency.

## Notice to second Buyer

Ok this new form is related to Form 22B and Form 39. It was needed due to not having a formal method to communicate first buyer's response to receiving the Bump notification to 2<sup>nd</sup> Buyer. When first buyer (22B contingent Buyer) receives a bump notice, this means Seller has entered into a 2<sup>nd</sup> PSA with a Form 39 (2<sup>nd</sup> buyer). First buyer, upon receiving bump notice, has two choices. They can either waive the 22B addendum in which case they will have waived all other contingencies and agree to close in 30 days. Or this buyer can opt to terminate the contract which would then put 2<sup>nd</sup> Buyer in first position.

# Business Practices

## Broker Responsibilities when in Management

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

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

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

For example, if a designated broker properly delegates authority to a managing broker to supervise the brokerage services of a team member who is licensed less than two years, and team leader fails to exercise proper supervision, designated broker remains responsible to the Department of Licensing for that failure of oversight.

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

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

## Multiple Offer Situations

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

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

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

### Evaluating the Offers

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

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

### Seller Options

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

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

### All offers MUST be presented.

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

### Disclosure of Multiple Offers

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

**Counter offers.**

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

**Avoid selling the house twice.**

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

**Avoid Discrimination**

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

**Escalation Clauses**

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

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

**Offer Accepted**

When a seller accepts an offer, it is important for the listing broker to take the responsibility to inform the other buyers that their offer was not accepted. It is important to note that this “failure to present offers” has become a significant discipline issue for DOL. It is unlikely that listing brokers are failing to present all offers timely. It is far more likely that listing brokers are failing to give unsuccessful buyer brokers proof that seller reviewed and rejected buyer’s offer, leaving buyer and buyer’s broker to wonder whether seller saw buyer’s offer at all. Buyers and buyer brokers, frustrated by not getting the property and uncertain as to whether buyer’s offer was seen, are more likely to file a complaint with DOL, claiming listing broker failed to present the offer. When DOL investigates, listing broker will have to prove that listing broker timely presented all written offers. Unfortunately, a typical listing file contains no proof of timely presentation. Listing brokers can avoid this DOL investigation and discipline altogether by giving buyer brokers the courtesy of notification that seller rejected buyer’s offer. Returning the offer with the word “rejected” written across the face of the offer, signed and dated by seller, provides proof of seller’s timely review and rejection of the offer.



# Transaction Coordinators

What really is a “transaction coordinator? Are they licensed? Who are they licensed with?

If you are a listing agent working with a transaction coordinator to close a transaction, and the transaction coordinator is licensed under your designated broker and firm, then they also represent the client. But, if they are not licensed under your firm, they do not.

If a broker represents the seller, there is an agency relationship with the broker and the seller, If the transaction coordinator is not with the broker’s firm, they promise to perform the work that requires a brokerage services agreement but they do not represent the client. Licensed as an agent or not, they cannot perform brokerage services for a client that is represented by another firm.

Does the transaction coordinator have an agency duty to the seller? License law says that licensee operates under the authority and supervision of a firm and the designated broker. The transaction coordinator is not operating under the listing broker’s firm. If there is a problem, the transaction coordinator does not represent the listing broker’s client and does not report to their broker. Then there is the matter of the documentation. Most transaction coordinators say that the documents are avail 24/7 to the broker, but are they available to the designated broker? What about confidentiality? The transaction coordinator may be talking about confidential issues with the client but the TC does not represent the client so that they are not bound by confidentiality.

Some transaction coordinators help obtain signatures, meet third parties at properties, negotiate with clients and discuss contract issues. All these duties require a brokerage services contract. But they are not licensed to perform these services under another brokage.

If you are going to hire a transaction coordinator outside your firm, you need to have a contract that says they will not perform brokerage services. In addition, it must include an agreement that they are not compensated on a successful closing. If so, then it appears to the DOL that you are dependent on a successful closing then you are compensating them for brokerage services. Discuss this with your designated broker.

The WA Dept of Licensing is studying this issue for WA state. There is a team of commissioners that will meet over the next 6 months to discuss the issue and make recommendations.

# Top Violations for Brokers

The investigation unit of the Dept of Licensing for real estate suggested that these are the top issues that they see during investigations.

## Record keeping

The number one challenge is that the records for transactions are not complete and kept accessible. There is a task force with the DOL to study this issue appointed in Nov 2023.

- Maintain all records on transactions. This includes all communication. It also includes information on all transactions that did NOT come together.

- Make sure that the records are kept secure and private.

- Make sure that all records are available and accessible when there is a DOL audit.

## Trust Accounts

Consumer funds in trust accounts are a priority with the DOL. We are tasked with keeping those funds. The accounts must be set up and maintained properly.

## Broker Responsibilities

Designated brokers can delegate responsibilities to other Managing Brokers only. This information is to be available to auditors when they do an internal audit. A broker that performs duties outside of their scope of responsibility violates license law. Examples include team managers who are not licensed as Managing Brokers but are performing duties (including keeping consumer funds managed or hiring and training new licensees) outside of their responsibilities.

## Advertising

Advertising must have the Firm Name as licensed on every type of marketing. Some firms have created many “assumed names” so it is important that the broker know what their firm expects. Firm name must be disclosed within “one click” on any social media. A team cannot use a name that a consumer would assume is a name of a firm. Teams, unless under an assumed name by their company, must also disclose the firm name in a “clear and conspicuous manner.” That could mean, no smaller than the smallest typeface on the advertising.

If the firm or the broker has changed their address, it is imperative that the DOL is informed. This would most likely be done on the SAW account.

## Failure to cooperate with DOL

If you get a notice from the DOL that you are being investigated, don't ignore it. You don't wait until the very last minute when you are scheduled for a sanctions hearing. The DOL basically investigates when there is a complaint. If they find reasonable evidence they move forward. You have rights including ordering under the Freedom of Information Act information regarding your investigation.

If you do not cooperate immediately and fully, you are violating another law under License law!

## Unlicensed activity

What you are licensed to do as a real estate broker or managing broker is specified in license law under brokerage responsibilities. Examples of unlicensed activity can include: managing your friends rental house by writing the advertisement or talking with prospects, for example, even though you are not taking rent or deposits.

# Risky Practices in an Abundant Market

## Listing Brokers

### 1. Falsifying Information on Competing Offers

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

### 2. Offer Instructions

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

### 3. Review Dates for Offers in the Future

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

### 4. Misleading Photos in Listings

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

### 5. Property Information Disclosure Form

Explain the Seller Disclosure Form 17 and the importance of filling it out truthfully and correctly.

### 6. Present all Offers in a Timely Manner

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

### 7. Every Action taken is the Seller's Choice

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

### 8. Taping conversations

Inform sellers about the taping of communication without the other persons consent is against WA law. It is on agreements that they sign. You cannot tell them to NOT use their Ring doorbell, for example, because they might need for safety. But they need to understand that taping the conversations of buyers in and outside their home is against WA state law.

## **Buyer Brokers**

### **1. Dangerous Inspection Practices**

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

### **2. Striking the Information Verification Paragraph**

The information Verification paragraph gives the buyer the opportunity to discover errors. This can be shortened. By striking it, the seller is asking the buyer to waive the right to verify information that may be critical to the buyer's decision to buy.

### **3. Drafting any documents**

The broker is only allowed to fill out preprinted forms prepared by an attorney. Once a broker starts drafting complicated forms, they are outside of their licensing duties.

### **4. Earnest Money early release**

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

### **5. Post Closing Possession or Rent-Back by the Seller**

If the sellers refuse to vacate when keeping possession of the property after closing can be a serious issue. The broker may not represent them as their agent, so they may have to get legal advice. The seller might refuse to vacate because of something like a broken hip or a covid diagnosis. The buyer might be waiting with the truck full of their furniture and bathrobes but cannot move. The buyer who is now a landlord, will be required to pay the mortgage. It is recommended that a broker never write a seller rent-back or a buyer early possession without the client confirming with an attorney.

### **6. Buyer waiving right to receive Form 17**

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

### **7. Timelines**

Stay on top of important timelines and not exposing the buyer or the seller to unfavorable consequences.

# Professional Standards and Safety

## Professional Standards

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

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

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

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

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

The type of complaints can include:

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

## Fair Housing Education

All real estate brokers are required to take a 6 hour WA Fair Housing class on the renewal after June 2022. It is important to note that on **subsequent** renewals, ALL brokers are required to take a **3 hour fair housing class**. This is in addition to a required 3 hour Core Curriculum class.

## Statue of Frauds

All real estate contracts must be in writing. Many agents still rely on verbal contracts and agreements. They are not enforceable. Make sure all agreements are in writing according to the Statue of Frauds law.

# Safety practices for Brokers

1. Keep it light – show properties before dark. If you must show a property after dark, turn on all lights.
2. Checking in – when you have a new client, ask him/her to stop by your office and complete an identification form. Also, photocopy their driver's license.
3. Don't be too public – Limit the amount of personal information you share.
4. Touch base – always let someone know where you are going and when you will be back.
5. Open house safety – don't assume that everyone has left the premises at the end of the open house. Check all the rooms before locking up.
6. Bring up the rear – when showing a home, always have your prospect walk in front of you. Don't lead them, but rather direct them from a position slightly behind them.
7. Pick up some self-defense skills.
8. Take the wheel – whenever possible, take your own car to a showing.
9. Got cell service – when you're showing property, locations may interfere with reception. Check in advance of a showing.
10. Agree on an office distress code – create a voice distress code, a secret word or phrase that is not commonly used but can be worked into any conversation.
11. Have your excuse ready – part of being prepared to deal with a threatening situation is having "an out". Prepare a scenario in advance so that you can leave or you can encourage someone who makes you uncomfortable to leave.
12. Lock up clients' keys – be sure to use the lockbox property-key procedure that has been established to improve real estate safety.
13. Nothing personal – when talking to clients and prospects, be friendly but keep your personal information private.
14. Dawn to dusk – when showing a vacant commercial site, be aware of the time of day you meet a client.
15. Don't dial and drive – using a cell phone while driving can cause an accident. For safety, use a hand-free phone for your vehicle.
16. Carry less – if you carry a purse, lock it in your car trunk. Carry only non-valuable items, except your cell phone.
17. Take two seconds to pause and look around as you enter your destination.
18. Be prepared – to best prepare for an emergency, pre-program important numbers in your cell phone.
19. Don't use the "v word" – when describing a listing never say property is vacant.
20. Be in charge – whenever possible, be sure your cell phone has a full battery charge.

**Most importantly.... Listen to your gut! If you have any reason to suspect a safety issue, take the best way possible to remove yourself from the situation. Don't wait until it is too late!**



## Quiz for Core Curriculum 2024-2025

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

1. Real estate brokers representing the sellers are not required to have a brokerage services agreement signed by the sellers. True / False
2. The Brokerage Services Agreement for the Buyer's agent must have the name of the broker "appointed" to be the buyer's agent. True / False
3. When a broker represents both the buyer and the seller in the same transaction it is called "limited dual agency." True / False
4. Brokers are required to provide the Agency pamphlet to all parties they provide brokerage services to including any unrepresented party. True / False
5. Brokers must provide the Law of Agency pamphlet "as soon as reasonably practicable" which could be after showing a few homes. True / False
6. The written brokerage Services Agreement affirms that the client received the Law of Agency Pamphlet. True / False
7. Real estate firms and brokers cannot be paid compensation without a brokerage services agreement on file. True / False
8. A listing agreement is not a brokerage services agreement. True / False
9. Agents showing prospective tenants rental property must provide a brokerage service agreement "as soon as reasonably practicable." True / False
10. Due to legislation passed in 2023, a listing agreement term is now restricted to 5 years or less. True / False
11. A non-exclusive agreement means that the client may work exclusively with you as their agent and not with other agents. True / False
12. The compensation in a real estate transaction can be paid by the seller or the buyer and only if there is a written services agreement. True / False
13. Commercial real estate transactions only can provide a "Compensation Disclosure" to a buyer in a commercial transaction. True / False
14. When a seller retains possession of their property after closing for less than 3 months, they fall under the Landlord Tenant Act. True / False
15. The "Evidence of Funds" form should be used on all offers to identify sources of funds, especially contingent funds. True / False

16. A “hard money loan” used for a down payment is a loan and is contingent funds. True / False
17. The buyer, without seller consent, emails their inspection to the seller. This is considered good practice to have full disclosure. True / False
18. If a seller consents to the receiving of the inspection report on the purchase and sale agreement, the buyer MUST provide it. True / False
19. If The delegation of authority is NOT a delegation of responsibility. The Designated Broker is responsible for actions delegated to a MB. True / False
20. A property has a pending offer. The listing broker receives a bonafide offer from another party, it does not have to be presented. True / False
21. The information Verification Period on the P&S agreement gives the buyer time to verify the statements made by the seller. True / False
22. A designated broker can delegate the responsibility to verify handling of client funds to a broker with 2 full years experience. True / False
23. If there is wrongful delivery of the inspection report without seller’s permission, the buyer is in breach of contract. True / False
24. Though it is not a law, a listing agent, as a best practice, should inform the buyer agents when another offer has been accepted. True / False
25. Transaction coordinators must be licensed in the state of WA as a broker or an escrow agent. True / False
26. A broker is required to provide all documentation including communication with parties on all transactions to the firm. True / False
27. Team managers who are brokers cannot perform duties including managing consumer funds or hiring and training new licensees. True / False
27. All advertising must include the “firm name as licensed” in a “clear and conspicuous manner.” True / False
28. A listing broker has the responsibility to present all offers to the sellers within typically a day of receipt. True / False
29. Taping conversations without consent is against WA law. It is important to inform all clients, especially if there is a “Ring” doorbell. True / False
30. It is important to understand that Earnest Money is designed to be held by a neutral third party. True / False
31. All delegation of duties from a Designated Broker to a Managing Broker must be in writing for the auditor. True/ False
32. Overseeing a broker licensed less than 2 years is an example of a duty a Designated Broker can delegate to a Managing Broker. True / False
33. All offers on real estate must be presented to the seller in a “timely manner.” True / False



34. If a property for sale has a mutually signed offer, the law requires that all offers still must be presented to the seller. True / False
35. A seller cannot sign two agreements to sell the property, but the seller can sign a back-up offer if the first should fall apart. True / False
36. The listing broker does not have the right to withhold an offer from the seller hoping for another offer to be written. True / False
38. If there are multiple offers with some written much lower than the others, the seller still has the right to review all offers. True / False
39. If the seller agrees to an offer review date, any offer received prior to that date must be presented to the seller when received. True / False
40. A broker cannot delay presenting offers to the seller for any reason under the broker's control. True / False
41. In most cases, presenting an offer in a "timely manner" would be to email the offer within the day it is received. True / False
42. All real estate offers and agreements must be in writing and NOT verbal according to the Statue of Frauds. True / False
43. Every action or decision by a listing broker must be the seller's choice. True / False
44. A listing broker should never include misleading photos in a listing including photoshopping out powerlines or adding views. True / False
45. Any offer instructions must be agreed upon and signed by the seller. True / False
46. Brokers have a duty to deal "honestly and in good faith." Any falsifying of information on a listing would violate their duties. True / False
47. It can backfire on buyers if they waive their right to an inspection. Buyer agents should make sure they are aware of that. True / False
48. It is a best practice to take steps to make sure you are making good decisions regarding safety when showing property. True / False
49. A 6 hr Fair Housing class is required for brokers. On subsequent renewals ALL brokers will be required to take a 3 hr Fair Housing class. True / False
50. It is required to take the Core Curriculum class for each renewal. True / False

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



## Mandatory Registration and Evaluation

Did you read the material in the booklet on this date? YES / NO  
 Did you complete the quiz and attach answer sheet? Your phone can have a free scanner app!!! YES / NO  
 Did you pay tuition using secure payment option on the website. YES / NO  
 Did you fill out and sign this form? YES / NO

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

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

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

<b>Current Issues Core Curriculum 2024-2025</b>		
Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
	Email	
License Renewal Date		Date Class taken

*Thanks for taking this class! I really appreciate the brokers that take clockhours from my school! I am always working on my classes and writing new ones!*  
**Professional Direction, email: [clockhours@gmail.com](mailto:clockhours@gmail.com)**  
[www.clockhours.com](http://www.clockhours.com)