



# The Legal Edge

15 clockhours

This course includes

**2024-2025 Residential Core Curriculum**

**Current Issues**

By

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



## Clockhours by Mail

1. You will be provided with a booklet of with the class material here in a pdf format. It is a **15 CLOCKHOUR CLASS**. This class **INCLUDES** the 2022-2023 Residential Core Curriculum
2. The course has been divided up into sections. In Washington State a “clock hour” is 50 minutes. There is a quiz at the end that can be answered as you read the material or after reading.
3. **Answer** the questions on the quiz sheet.
4. If you have any questions regarding the material or the questions, don’t hesitate to call or email Natalie Danielson.
5. **Email** Quiz and Evaluation to Professional Direction.
6. The certificate will be emailed upon 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!

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# The Legal Edge... Current Legal Topics in Real Estate

## Includes the 2024-2025 Residential CORE Class

### Curriculum

	Major Topics	Objective
<b>1</b> <b>60 min</b>	<b>Broker Responsibilities</b>	Broker Management Responsibilities* "Teams" Real Estate Assistants Broker Safety* Secret Listings
<b>2</b> <b>60 min</b>	<b>Legislative and Legal issues*</b> <b>Dept of Licensing*</b>	Fair Housing Required class for renewals Current Real Estate Legislation* What records must be kept and by who* Video and Audio Recording Online Renewal*
<b>3</b> <b>120 min</b>	<b>Agency Law*</b>	Law of Agency Duties and required Brokerage Agreement* Copy of the consumer Agency Law Pamphlet*
<b>4</b> <b>120 min</b>	<b>Real Estate Lawsuits*</b>	Seller sues broker for failure to sell overpriced listing* Buyer sues seller/broker for lack of disclosure* Buyer sues firm for not returning EM when sale fails* Class action lawsuit against Realtors for buyer broker commission
<b>5</b> <b>90 min</b>	<b>Fair Housing and Anti Discrimination</b>	Federal, State and Local laws and protected classes What it means for brokers Love letters
<b>6</b> <b>60 min</b>	<b>Disclosure Buyer Beware</b>	Understand disclosure on Lead Paint, Mold, Carbon Monoxide, and Geologic issues Buyer Beware Referring third party vendors

<b>7</b> <b>120 min</b>	<b>Writing Purchase and Sale Agreements*</b>	Discuss risk of unauthorized practice of law under Heritage House case Current issues and changes with forms* a. Evidence of funds* b. Inspection Addendum* c. Inspection Response* d. Early or delayed occupancy* e. Earnest Money* f. New Forms*
<b>8</b> <b>60 min</b>	<b>Multiple Offer Situations*</b>	How to handle multiple offers* Timely presentation of all offers*
<b>9</b> <b>60 min</b>	<b>Advertising and Social Media Guidelines</b>	Requirements for advertising and social media "One Click Away"
<b>10</b> <b>60 min</b>	<b>Property Management*</b>	Update on the newest WA Landlord/Tenant Laws* "Just Cause" eviction provisions do not affect rent backs and early possession* Know that brokers cannot perform property management without approval from designated broker Know that property management is a real estate activity Know the contracts and record keeping requirements and how trust funds are to be treated Identify which functions can be delegated
<b>11</b> <b>90 min</b>	<b>Risky Practices in an Abundant Market*</b>	Listing Brokers* Buyer Brokers* Professional Cooperation*
<b>12</b> <b>60 min</b>	<b>Fraud in Real Estate</b>	Know and identify red flags for fraud in real estate transactions.

**\* items marked with asterisk are required Core Curriculum topics**

# The Legal Edge... Current Legal Topics in Real Estate

## Includes the 2024-2025 Residential CORE Class

This is an overview of the most current legal issues in the real estate industry. There are changes happening constantly in all aspects of our business. This is an overview of the most current trends in the industry which also includes the current Core Curriculum and satisfies that requirement.

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

### **Objectives**

As a result of taking this class the agent shall be able to understand the most current legal topics in the following areas:

1. Organizational Structure
2. Legislative and Dept of Licensing
3. Agency Law
4. Real Estate Lawsuits
5. Fair Housing and Anti-Discrimination
6. Disclosure and Buyer Beware
7. Writing Purchase and Sale Agreements
8. Multiple offers and Timely presentation
9. Advertising and Social Media
10. Property Management
11. Risky Practices
12. Real Estate Fraud

# Chapter 1

## Organizational Structures and Responsibilities

### 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.

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.

### "Teams"

Under Washington State License and Agency Laws, the word and concept of "team" is not defined. It has been a common practice within many real estate firms to have an additional layer of organization that includes one or more agents working together under the name of a team.

The following can be examples of current team organization

- A husband and wife working together. Once can be licensed as a broker and the other unlicensed. One or both can be managing brokers.
- A team organized under the name of a "top" agent can include an entire management structure. There can be listing agents, buyer's agents, and transaction staff. The lead agent can be licensed as a managing broker and be delegated duties to supervise the others within the sub organization. Or the lead agent can hold a broker's license and have no duties to supervise the other brokers within the team.

- A group of agents can work together as a team with or without using a team name. They can work together with clients. They can all be licensed as brokers or there can be one broker with a managing broker's license who is responsible for the team records.

When a group of agents chooses to use a name to describe their team when advertising, there must be full disclosure of the real estate firm name.

In some cases, a team may request from the designated broker that the team name be an "assumed name" under the Dept of Licensing. If that is the case, the organizational corporate structure is not changed, but the Dept of Licensing is aware that the team is organized under the firm and the firm name is not required on advertising. This is only in the case of a Designated Broker registering an assumed name for a team. The team cannot apply to the DOL for an assumed name. Only a Designated broker can do so. The Designated Broker then owns the assumed name, even if the team, for example, leaves the firm.

## Transaction Logs

Washington State law RCW 18.85.285 requires that all FIRMS have complete transaction logs. The verbiage is as follows:

"Brokers and managing brokers must submit complete copies of their transactions to their firm. The designated broker shall keep adequate records of all real estate transactions handled by or through the firm or firms to which the designated broker is registered. The records shall include, but are not limited to, a copy of the purchase and sale agreement, earnest money receipt, and an itemization of the receipts and disbursements with each transaction. These records and all other records specified by the director by rule are open to inspection by the director or the director's authorized representatives."

The Administrative Code WAC308-124C-105 details the required records that the designated broker must keep.

Financial records including trust account records and bank records, duplicate receipts, check register/stubs, verified bank deposits, accounting ledgers for all moneys received or disbursed.

Documents that must be retained include:

- An accurate up to date log of all agreements or contracts for brokerages services submitted by firms affiliated licensees.
- A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firms files
- A transaction folder containing all agreements, receipts contracts documents leases, closing documents and material correspondence for each real estate or business opportunity transaction and for any rental, lease, contract or mortgage collection account.
- All required records shall be maintained or digitally accessed at one location where the firm is licensed. This location maybe the main or any branch office.
- Audits are now held digitally/remotely by the Dept of Licensing.

The required documents include the type of real estate brokerage services provided, identify the parties, and all correspondence.

Correspondence can be critical in proving what happened during a transaction. This can include text, emails, letters, handwritten notes and social media.

### **Transactions that do NOT close**

Documentation that must be submitted by brokers to the designated broker include files for transactions that DO NOT CLOSE! This is because the DOL can get complaints from consumers regarding transactions regardless of whether they close or not.

## Unlicensed Assistant Guidelines

In order to perform real estate brokerage services an individual must be licensed under the real estate license laws. A real estate assistant cannot perform duties that would require a license even though they have oversight by a broker. They cannot show property, complete contracts, negotiate sales or listing, interpret or explain contracts, or give information on a listing or sale that is not publicly published.

## Broker and Client Safety\*

There are times when a seller, buyer or the real estate agent may be vulnerable in a real estate sales situation. In this industry real estate agents, both women AND men, need to be aware what decisions may affect their clients, the property or themselves. It is important to know what measures can be taken for self-protection, protecting identity and property, clients, and drug issues.

There are numerous statistics and stories in the country about the danger and risks taken by real estate agents. The National Association of REALTORS undertook a study in released in June 2002 that showed that 1 in every 4 agents in the study have been involved in incidents or harassing situations. Over half, 67% of agents, in the study have experienced safety concerns, incidents or harassing situations. Forty percent of the agents know of other agents that have been in safety incidents or harassing situations. In the United States according to the Bureau of Labor Statistics in 2007, there were 18 fatalities of real estate agents/property managers/community association managers. Of those 10 were homicides. These are old statistics before we had the technology today, but the dangers are still there.



Don't take risks as a real estate agent. There are times when the market is slow with desperate sellers that appear to really "need" you. There are buyers that are looking for an unbeatable deal. You might not have had a client in a long time. Don't do something that is risky just to get a deal. Follow your instinct.

- Have buyers prequalified before showing any properties.
- Have clients sign a buyer agency agreement,
- Get ID from clients and have them prequalified prior to showing homes.
- Hold open houses during daylight hours only and, if possible, have another person there.
- Do not meet buyers out at properties without meeting them at the office first.
- Make sure someone always knows where you are at all times.
- Keep an escape route when in a home alone.
- Never go into the basement with a client.
- Always follow a client up the stairs... not have them follow you.

There are many other tips... but your instincts should guide you.

Have a plan so that if you contact another agent, that agent or your office knows that requesting the "red file" is a sign that there is a serious issue, for example.



### **Don't let buyer's do something stupid**

When you show prospective buyers properties, it is important to avoid potential mishaps that can result in injury or danger to them. Buyers shouldn't be climbing on the roof or messing with the electrical panel, for example.

### **Sellers need to put away valuables.**

Sellers need to be counseled to put away items of value. There are many items lying around the house that have value, but the homeowners may not realize it. Their identity is at risk based on what they may leave on their desk. They have items of value from computers to jewelry to car keys that can be lifted by shady buyers.

If an agent does have a problem, they need to report it to authorities. Many agents get embarrassed or don't think it was really a serious problem, and do not report their concerns to local police. You could be saving another life!

*One agent told me in class that a friend of hers was horribly attacked at an open house. She called her sister and went directly to her house. Then she called her husband and told him she was overworked and needed a break and that she was staying with her sister for a while. She never reported the attack to the police or even to her husband!*

## **Secret Listings**

Pocket or secret listings are violating our MLS rules. They also are not good for the homeowner as they will most likely not get full value if not exposed to the open market. This could leave the agent with some liability.

Off market listings are considered any listing that is not exposed to the open market, which in our case is the local MLS. Pre-listing, coming soon or whisper listings are where the broker has engaged a seller in a limited marketing arrangement to premarket or sell prior to executing a listing agreement.

During a Legal Symposium several years ago, the problems with off market and pocket listings were discussed. One entertaining and serious discussion focused on the motive for a real estate broker to have a "pocket listing" agreement with a seller instead of an actual signed listing agreement with the MLS. The excuses listed included: the seller did not want to be identified, the house needed to be staged, the owner not ready to show, the property is high end, the owner wants to limit exposure (could be dangerous under fair housing), the owner wants to "test" the market, etc. All those are basically excuses and as a real estate instructor I also hear them in my classes.

As a real estate agent and member of an MLS and most often the REALTORS, you are bound by the laws, rules and guidelines in order to sell real estate for a commission in our state. The NWMLS rule says that "Members shall not promote or advertise any property in any manner whatsoever, including but not limited to yard or other signs, flyers, websites, email, texts, mailers magazines, newspapers, open houses, previews, showings and tours, unless a listing for that property has been delivered to NWMLS or input by the member and has not been cancelled or expired."

Most often, the broker is not disclosing to the firm. Most experts believe that having pocket listings that are not exposed to the open market are simply motivated by greed. The median sales price for a listing that sells through the MLS is between 9%-30% higher than if property sold as off market. The value of the MLS is much greater than the consumers realize.

If you do sell a property that was not exposed to the open market through the MLS, it is important to have a seller representation agreement if the broker is representing seller on a sale to a buyer the seller has identified.

# 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 brokerage.

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.

# Chapter 2

## Legislative and Legal Issues

### Fair Housing Required Class

In 2021 the Washington State legislature passed a law that requires every real estate broker to take a class on Fair Housing. The class is 6 clockhours that must be approved by the Real Estate Commission. The curriculum will be written by a company that they choose in early 2022. Of course, Natalie's school will offer the class and it will be found on [www.clockhours.com](http://www.clockhours.com)). Brokers and managing brokers will take the class **on their next renewal after June 1, 2022.**

#### **IMPORTANT!! You are not done with Fair Housing Classes!**

After you have complied with the rule to take the 6 hour Fair Housing class, you are required on ALL subsequent renewals by all brokers to take a 3 clockhour DOL approved Fair Housing class. Natalie did attend and speak at the House and Senate Hearings and the Ways and Means Committee where they voted to budget \$250,000 to the Department of Licensing for the class. There is no information available as to how the money is to be spent, or how people can be involved in the curriculum. This is a LAW as opposed to the core class is a "rule."

*"Yes, Mack. Everyone has to take more Fair Housing Classes!"*



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

#### Future Listing Contracts or Long Term 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.

V Realty and Home Options are the companies that represented these future listing firms at the legislative hearings. See videos on "Get Jesse on Youtube. 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.



## Photos and Videos Are you and clients being recorded?

Just about every person is always walking around with a photo and video camera in their pocket. Washington State law RCW 9.73.030 regarding recording or divulging private communication requires consent to record any private communication between two or more individuals by an electronic device without getting consent of all the participants. Consent would be considered obtained when one party has announced to all other parties engaged in the conversation, in any reasonable effective manner, that such communication or conversation is about to be recorded or transmitted. This statute has been on the books for over 30 years.

When sellers list their home for sale they open the doors to brokers and clients to preview the property. In this day of constant electronic recording, it would almost be expected that buyers would take photos inside the house. In addition, there are sellers that have installed and hidden video sometimes including audio recording in the house.

If there is any chance that the seller has audio recording, they should notify any person entering that they may be recorded. A prominently displayed sign would most like be adequate, according the Justin Haag, from the NWMLS.

## Who Owns the Photos?

The photos of your listing are owned by the photographer. How you are allowed to use those photos will depend on the contract between the photographer and either the seller, the agent or the marketing person. If a house fails to sell and the seller hires another broker, that broker does not automatically have the right to the old photos. If the seller says that it is "fine" to use the photos, make sure you verify the rights prior to using them in any public setting.

The photos are meant to be an accurate representation of the property. Photographers often take the liberty of editing including adding a blue sky and using a wide angle lens so the mini living room looks fit for all the extended relatives. Make sure that the photographer does not edit out important issues like a water tower, power lines, or add features not there.

# DOL Renewal and License Online Features

## Dashboard

Every licensed real estate broker has a dashboard on the Department of Licensing Secure Access Account. This is where you keep your contact information current, renew your license, and transfer your license

## Renewals

When you renew your license, you will log in to your Secure Access Account, find your license information. You will click “renew” on the dashboard and you will be taken to a screen where you will attest that you have taken your continuing education. You will no longer list the classes, course numbers and dates. Then, you will pay using a credit card.

## Audits

The Dept of Licensing will automatically audit approximately 10% of the renewals. If that occurs you will be asked to email your certificates.

## Fingerprinting

Every six years, every licensee is to be fingerprinted. The SAW account may notify you if you are due. You will be notified when you are due for fingerprinting. In the past, fingerprint cards were mailed out. Now, there is a vendor that takes care of all fingerprinting. There are certain offices with times available and you can make an appointment.

## Changing/ Transferring

If you choose to transfer or leave a firm, that is completed through the website on your own without the permission of the designated broker. If you choose to go to another firm, that firm will “open the door” with a request and you will click to accept.

The online system was revamped in 2019 so you might want to expect that there may be some issues. The issues might be small or they might make it almost impossible to navigate through the system. Don’t pull out your hair if you have any left! It is not fun and can be very frustrating.





# Chapter 3

## Agency Law

### What are Your Agency Duties?\*

The Law of Agency created statutory duties which means they are spelled out in the law. Statutory duties allow brokers, consumers, and the courts to clearly understand an agent's role and responsibilities by listing them in the context of the Agency Law. Fiduciary duties of loyalty, confidence and trust are often hard to define so the laws more specifically identify the role and duties and agent has regarding their clients.

#### Agency duties as outlined in the Law of Agency

As an agent, you have specific duties that are prescribed by law.

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived: This means... you cannot have the seller or buyer agree that you are not going to be responsible for the following.



- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate.
- (e) To account in a timely manner for all money and property received from or on behalf of either party;
- (f) To provide a pamphlet on the law of real estate agency to all parties to whom the licensee renders real estate brokerage services and to any unrepresented party as soon as reasonably

practicable.

- (g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services who the broker represents; and
- (h) 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.

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



## Broker's Duties to a Buyer or a Seller

- A. To be **loyal** to the principal by taking no action that is adverse or detrimental to the seller's interest in a transaction.
- B. To **timely disclose** to the seller any conflicts of interest
- C. To advise the seller to **seek expert advice** on matters relating to the transaction that are beyond the agent's expertise.
- D. **Not to disclose any confidential information** from or about their principal;
- E. Make a **good faith and continuous effort** to find a property for the buyer or 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.

### Duty of Honesty and Good Faith is owed to all parties

A recent court case in 2020, Falcon Properties v. Bowfits 1308, overturned a previously held understanding about broker's duties. These are the duties owed to the buyer, to the seller, and to all parties involved in a transaction.

The court of appeals decision stated that duties owed to all parties are not owed to all parties, but rather the broker only owes those duties to the person they represent.

This changed what the industry understood.

The changes to the Law of Agency in the Legislature made it clear that brokers owe a duty of honesty and good faith to the buyer if they represent the seller. .. They owe this duty of Honesty and Good Faith to all parties. This legislative definition will protect consumers in the future so that cases like Bowfits don't happen again.

## Discussion Questions

If you show a prospective buyer a property not listed with you and they are interested in buying that property. Do you represent them?

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

Are you required to show a buyer you represent properties that are for sale by owner or are showing no compensation to buyers agent?

*No, you are not obligated to show a buyer properties where there is no written agreement from the seller to pay you commission. This is because all agreements for commission must be in writing according to the Statute of Frauds. If the selling office publishes that there is no commission or the property is for sale by owner, the broker is not required to show it to the buyer.*

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

*No, according to the duties of a seller's agent, you can show competing properties to a buyer.*

Can you list another property in the neighborhood of a listing you currently have at a better price without breaching the duty to your seller.

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

You have a buyer that wants to purchase a property. Just after you write up the contract, another buyer calls you and wants to write up an offer also.

Can you write up the second offer?

*No, you can't write two offers on a property with two different buyers. You would be breaching your duty to the first buyer. If the offer from the first buyer fails, you can write an offer from the second property.*

## Buyer Agency Agreements

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 not 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 commission for the buyer is seldom negotiated by the buyer's agent. The commission 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 steep discounted commission or offer no commission at all. This will require the buyer's agent to have a Buyer agreement so that commission can be negotiated by both parties.

# Brokerage Agreements are Required

## House Bill January 2023 Brief Summary

Requires a written services agreement between a real estate firm and a buyer or seller.

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

## Testimony from the Legislative hearing

(In support) There has not been an update to the Real Estate Agency Act in 30 years. The world of real estate has changed as there are a number of different agencies and models. Consumer expectations have also changed. When the law was originally written, consumers did not search online for houses to purchase. Case law, agency investigations, and the statute were all analyzed for opportunities to update the law.

The agency law pamphlet is rated by the Consumer Federation of America as the worst in the country because it just restates the statute.

HB 1284- 4 -House Bill Report There are a number of good changes included that will help protect the consumer by providing greater transparency and clarity. Whether the consumer is going through a real estate transaction as a seller or a buyer, it is important for them to know what their agent's responsibilities are.

Under this legislation, the buyer will also have to enter into a written services agreement with the agent. This is evolution of the industry from having a time when buyers had no representation to now having representation. This should be further evolved by requiring a services agreement. There is no other service that a person receives where there isn't a contract in place. The services agreement will increase transparency and control for the buyer because the compensation arrangements will be visible. Typically the seller creates the terms, but it is the buyer who funds the compensation. Many buyers do not realize they can negotiate the compensation. While agents can currently enter into written agreements with buyers, the vast majority do not. Written services agreements will also help explain dual agency to buyers and sellers. There have not been a lot of complaints about lack of transparency because buyers and sellers do not realize that there is anything to complain about.

A written agreement with a buyer:

- **Discloses the agency relationship in writing.**  
It is important that the buyer clearly understand the agency relationship
- **Affirms that the agent has given the buyer a copy of the Pamphlet on the Law of Agency.**

For some reason, brokers have clients sign the pamphlet that is required to provide. If the NWMLS or corporate attorneys wanted a signature on the pamphlet, there would be a place provided. The way to document that the buyer has received the pamphlet is for the client to sign the Buyer Agency Agreement.

- **Gives the buyer written consent for 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 Agency Agreement. Dual agency must be agreed to in writing.
- **Details terms of compensation.**  
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 Agency 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.
- **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.

## The Agency Law requires a Written Brokerage Services Agreement between all Parties

The written Brokerage Services Agreement between the firm and principal must contain the following terms and conditions.

- (1) The term (duration) of the agreement. The listing Agreement has a maximum of 5 years according to statute. Watch for possible limits for Buyers agreements as the Dept of Licensing is looking into this issue.
- (2) The name of the broker(s) appointed to act as an agent for the principal. This could be more than one as in the case of a team, for example.
- (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. This can happen if there is a dual agency with one agent on a specific property or two agents in the same firm are representing different parties.
- (5) The terms of compensation. Who is getting paid and by whom.
- (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.

## Buyer's Agency Agreement can be exclusive or 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.

An **Exclusive Agreement** would be similar to 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 time period and within certain geographical boundaries.

## The Payment of Compensation

Under the Statute of Frauds, payment of compensation in a real estate transaction must be in writing. It was most often in writing in the Listing Agreement for all the brokers. But, over the years, this has changed with buyers having responsibility to sometimes pay their real estate commissions.

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.

## How to use a Buyer Agency Agreement?

Real estate brokers in Washington state often seem to avoid using a Broker Services Agreement. With the disclosure of buyer's agent commission to the sellers and the buyers, the real estate broker may be in a position to discuss and negotiate commission in order to get paid.

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

## When You are Both Holding Hands .. Limited Dual Agency

Under the amended Law of Agency RCW 18.86.020 it states:

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

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

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

## 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.

When a listing agent shows his or her own listing to a purchaser that they represent, are they automatically a dual agent?

*No. Dual agency must be in writing with terms of compensation after providing the pamphlet on the Law of Agency. When representing a purchaser, the real estate agent should discuss agency with the consumer. A listing agent showing and selling to a buyer may represent the seller exclusively or be a dual agent.*

Dual agency could occur if the licensee discloses to the buyer verbally that they represent the buyer. The seller, most likely in most listing agreements, has agreed in writing to dual agency in the listing agreement. If the agent acts as a buyer's agent and is only going to represent the seller, the agent could have created an undisclosed dual agency situation. Undisclosed dual agency can create misrepresentation. If it is not in writing according to the law, the agent should not be acting as a dual agent.

## 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.

## 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.

## **When does the Agency Relationship Terminate?**

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.

# 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.

# Chapter 4

## Real Estate Lawsuits

### A. Seller Sues Broker for Failure to Sell Overpriced Listing



#### Brokers obligation to convey offer to client is limited

This is an important case for many reasons. First of all, the sellers sued their listing broker because the property didn't sell when it was clearly overpriced. They claimed they were damaged by decisions that the listing agent made which are typical of most listings. But, the final decision regarding the presentation of all written communication as specified in the Law of Agency was tested and better defined. The sellers lost their case against the listing broker after probably a couple years of litigation. Consider the list price, the photos and the updates when she relisted the house, that the broker discussed possible rental and the listing specifically indicated this. When the broker took the listing, do you think there were signs of trouble?

The **Beauregard's** a real estate broker, to list and sell their property in Bellevue, Washington.. During the initial meeting with the Beauregard's at their Bellevue home, the Beauregard's mentioned they were also considering another real estate broker. Ultimately the Beauregard's chose The agent because she estimated the property could be listed at \$ 2,488,000, higher than the other agent's estimate. The agent recalls merely "shar[ing] with them that other clients ... were buying a similar sized home one block over that was listed at \$ 2,488,000" and offered that amount as an example, only after the Beauregard's insisted on her opinion. The Beauregard's maintain that the agent inflated the price to induce them to enter the Exclusive Sale and Listing Agreement (the Listing Agreement).

Ms. Beauregard told the agent that, if they did not get offers within their desired price range, they were also interested in renting their property. The Agent concedes this alternative was discussed, but the Listing Agreement contracts The agent to "sell" the property, and specifically indicates that the "firm need not submit to Seller any offers to lease, rent, execute an option to purchase, or enter into any agreement other than for immediate sale of the Property."

The parties signed the Listing Agreement on November 11, 2015. The Listing Agreement did not include a list price, but listed the property as viewable by "Appointment," "Call Listing Office," and through the "Multiple Listing Service (MLS) Keybox." The agent also listed the property as owner-occupied despite it being vacant because for "premier properties," the agent prefers to go to the property before a showing, turn on the lights and heat, discuss key features of the home with the buyer's broker, and ensure the doors are locked after the showing. Additionally, the agent maintains that the property was not truly vacant because some of the Beauregard's' furniture was present, and a vacant property is more susceptible to theft. The Beauregard's maintain that The agent never fully explained to them that the property was listed as owner-occupied or as viewable by appointment, and had they known, the Beauregard's would have never

agreed to those terms. Those terms, however, were clearly listed in the Listing Agreement signed by the Beauregard's. ¶ 6 On December 4, 2015, The agent e-mailed the Beauregard's, recommending a list price between \$ 1,950,000 and \$ 2,150,000. Ms. Beauregard replied that she thought they had discussed a higher starting price range. The agent arrived at the suggested list price after conducting market research, which included two comparable properties in the same neighborhood. The first was listed for \$ 2,488,000, but sold for \$ 2,285,000. The second was listed for \$ 2,249,000, but sold for \$ 2,175,000. The property is a stacked three level floorplan, lacking an open floorplan, and with recent market preference trending towards open floorplans, The agent suggested a lower list price to compensate for the market trends. The Beauregard's disagreed with The agent's recommendation and the property was listed for \$ 2,288,000 with a \$ 5,000 "paint/deck stain credit" and went active on December 9, 2015.

The parties characterize the discussions about listing the property over the holiday period differently. The Beauregards maintain they contacted The agent about delisting the property over the holiday season, but The agent never responded because she was vacationing in France. The agent maintains that there was less inventory on the market, and listing over the holiday period would capitalize on buyers trying to relocate before the New Year.

During the months following the initial listing, The agent's office hosted at least 18 open houses at the property. No prospective buyers submitted offers during that period. The Beauregard's contend that the lack of offers was because The agent failed to follow-up with prospective buyers and used old photographs in the listing. At several points during her representation, The agent recommended that the Beauregard's drop the list price because other nearby properties had recently lowered their prices and attracted buyers. On February 3, 2016, the Beauregard's agreed to reduce the price to \$ 2,173,000, stating "[w]e had always felt the \$2.28 was ambitious, but wanted to try it." The agent recommended a further price reduction on March 20, 2016, to \$ 1,998,000, but the Beauregard's disagreed. On March 6, 2016, the Beauregard's notified The agent they wanted to switch real estate agents because they felt The agent was not following up with prospective buyers and had too many other listings in the Bellevue area. The agent convinced the Beauregard's to give her a second chance. The agent and the Beauregard's made several changes to the property and updated the listing photos, which showcased the re-sodded backyard, the exterior paint job, and updated interior photos.

Ultimately, the Beauregard's terminated their listing agreement with The agent in April 2016, and entered a new agreement with another broker. The property sold on August 17, 2016 for \$ 1,850,000.

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

During discovery, the Beauregard's recovered an e-mail from another broker with Windermere, sent to The agent on April 6, 2016 asking whether the Beauregard's would be interested in renting as opposed to selling because he had a client looking to move in mid-June from San Francisco, and rent a house. The agent replied that the Beauregard's were not interested in renting the property. Ultimately, the prospective renter never rented a property in Bellevue, and stayed in a hotel only for a couple of months before moving back to San Francisco. The Beauregard's contend that The agent was required by [RCW 18.86.030\(1\)\(c\)](#) to inform them of this "offer" to rent their property, failed to do so, and if this "offer" was conveyed, they would have accepted.

The email read, "Shot in the dark, but wondering if your client at XXX Bellevue 98004 might be interested in renting their house as opposed to selling, I have a friend moving from SF in mid June looking for a rental to get acquainted with the area. He and his family are looking in West Bellevue area like Clyde Hill, Medina, Hunts point, Yarrow point and surrounding. \$ 3500/mo is his target monthly2000+ sq/ftHouse2+ bedrooms. He is willing to sweeten the offer by paying cash in full for a year if needed and looking for 1-2 years."

The Beauregard's argued that the agent breached their duty by:

- (1) Inducing them to enter the listing agreement dated November 11, 2015 by way of negligent pricing advice by proposing a value of \$ 2,400,000.
- (2) advising them to list their home at an unmarketable value of \$ 2,288,000 and bad pricing thereafter.
- (3) Failing to clearly discuss the listing terms including orally clarifying that other agents would be informed of the suggestion for appointment.
- (4) Informing other agents that she should be contacted prior to any viewings.
- (5) Recommending that the Beauregard's list their home over the dormant holiday season.
- (6) Failing to respond to the Beauregard's inquiry of December 21, 2015 about de-listing the home over the holidays.
- (7) Utilizing old photos of the 2013 listing that were not representative of the home at the time of current marketing.
- (8) Failing to follow up with interest [sic] buyers in the spring of 2016.
- (9) Failing to inform the Beauregard's of the April 6, 2016 offer to rent their home for a 2-years [sic] lump sum cash payment.
- (10) Elevating her own financial incentives over and above the Beauregard's express and/or implied goals.

The statutory duty to convey all "written offers, written notices and other written communications" is triggered once a broker is rendering "real estate brokerage services." See [RCW 18.86.030\(1\)\(c\)](#). As discussed above, the amendment to chapter 18.86 makes clear that "[t]he duties under this chapter are statutory duties and not fiduciary duties. This chapter supersedes the fiduciary duties of an agent to a principal under the common law." [RCW 18.86.110](#).

Brokers owe these duties "to all parties whom the broker renders real estate brokerage services." [RCW 18.86.030](#). "Real estate brokerage services" is defined as "the rendering of services for which a real estate license is required under chapter 18.85 RCW." Chapter 18.85, which governs real estate licensure, defines "real estate brokerage services" to mean "any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation." [RCW 18.85.011\(17\)](#). Thus, while the statute explains that the duties are not waivable, they are owed when only a broker is acting for "compensation or the promise or expectation of compensation."

In the e-mail The agent received from Williams, the e-mail specifically asked if the Beauregard's would be interested in renting their house, as opposed to selling. The e-mail communication does not fall within the "real estate brokerage services" that the Beauregards contracted with the agent because Williams clearly indicated that the interested party only wanted to rent the property. Since The agent's scope of agency was limited to selling the property, The agent was not expecting compensation from renting the property. Therefore The agent did not have a duty to communicate the rental inquiry.

## B. Buyer sues Seller/Broker for Lack of Disclosure

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

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



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

The Court of Appeals reversed the trial judge's decision and sent the case back for the trial judge to dismiss the claim and award the seller attorney fees. Once the buyers were aware of some rot at the house, they were required to investigate further even though the discovered rot was minor and in a different location.

*According to the decision, the buyers did not have a duty to make an exhaustive invasive inspection or endlessly ask further questions. They merely had to make further inquiries after discovering the rot or at trial show that further inquiries would have been fruitless. The buyers could not get relief by asserting that the defect was worse than anticipated.*

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

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





## C. Drafting of Contracts and Return of EM

Dora E. Edmonds signed a buyer/broker agreement with an agent of John L. Scott Real Estate, Inc. The agent showed her a house listed by another Scott agent and, after reassurance from the agent that a basement drainage problem would be fixed and warranted, Edmonds signed an earnest money agreement for the purchase of the house. As the closing date approached, the basement was still wet, and Edmonds demanded the return of her earnest money.

John L. Scott's general counsel unilaterally determined, without investigation, that the drainage problem had been fixed. He declared Edmonds in default and disbursed half of her earnest money to the sellers and half to the agents involved in the transaction. Edmonds sued.

The trial court found that John L. Scott breached its fiduciary duty with respect to its disbursement of the earnest money, breached the earnest money agreement, was negligent in the preparation of the earnest money agreement, and committed two violations of the Consumer Protection Act (CPA). The court awarded Edmonds damages, including \$10,000 in exemplary damages for each CPA violation, and awarded her attorney fees and costs.

Pursuant to standard company practice, Edmonds' file was turned over to Scott's general counsel for handling. Without conducting any factual investigation into Edmonds' complaints regarding the water in the basement, and without undertaking to ascertain whether any warranties covered the work, Scott's counsel unilaterally determined that the drainage problem had been remedied. Less than a week later, the basement flooded again. When Edmonds refused to close on the ground that the water problem had not been fixed, Scott's counsel declared her in default and directed Scott's trust department to disburse half of her \$5000 earnest money to the sellers and half to the agents.

The court found that the listing agent failed to disclose material facts by failing to disclose the extent of the drainage work that had been performed prior to Edmonds' signing the earnest money agreement and by presenting a property information form containing statements she and the buyer's agent knew were false. These acts according to the court violated the Consumer Protection Act.

The trial court's conclusion that buyer's agent was negligent in preparing the earnest money agreement. The court found that to protect Edmonds' desire for a dry basement, the buyer's agent inserted the following language into the inspection contingency addendum to the earnest money agreement: "Seller to furnish copy of warranty for drainage work done." The court also found that the buyer's agent prepared the notice of disapproval of inspection report and intentionally omitted the basement water problem from the notice, telling Edmonds that it did not need to be included because she was already protected by the language he had added to the inspection contingency addendum.

*The court concluded that these actions by her agent fell below the standard of care of an attorney in preparing legal documents relating to the purchase of a residence.*

Licensed real estate brokers, when completing earnest money agreements, are required to comply with the standard of care of a practicing attorney according to the Heritage House case. The language the buyer's agent inserted in the earnest money agreement was insufficient to protect Edmonds' interests with respect to the water problem and fell below the standard of care of a reasonable and prudent attorney in preparing a purchase and sale agreement. To protect Edmonds' interests, there should have been an identification of who was doing what work, the right to inspect the work, and to specify when the work was to be completed, the right to require that the work be done to the buyer's satisfaction, an assurance that the warranty was assignable to her, and the availability of other remedies. Further, as illustrated by this litigation, the language inserted by her agent was entirely insufficient to protect Edmonds' interest in purchasing a house with a dry basement.

The court also found that listing agent breached the earnest money agreement by failing to deliver the warranties as to the drainage work. In addition, the court found that Scott's disbursement of the earnest money constituted conversion, a breach of fiduciary duty, and a violation of the Consumer Protection Act.

Disbursement of the earnest money without a written release is permitted only when the agreement terminates according to its own terms. An agreement terminates by its own terms only upon the happening of an event specifically identified in the agreement as one that will cause such termination.

The problem had not been corrected, as evidenced by the continued flooding of the basement after Scott's counsel declared the problem fixed and Edmonds in default. The unfairness of this practice is self-evident. Further, as Scott acknowledged, it followed this policy dozens, perhaps hundreds, of times in a period of four years, so the practice has the capacity to deceive a substantial portion of the public. Scott may simultaneously act not only as the seller's agent but also in furtherance of its own financial interests as well.

*This is a very old case but still used by the courts. After the decision was rendered in this case, most Washington State real estate firms stopped using their trust accounts to hold earnest money and instead it was held by escrow. The laws changed regarding distribution of earnest money in the case of a default and a demand for the earnest money.*

*Also, there were false statements on the Property Information Disclosure forms and the broker wrote addendums that didn't protect the purchaser's interest. Be very careful drafting addendums because you are held up to the standards of a practicing attorney.*





## D. Class Action Lawsuit in 2019 challenges Commissions Paid to Brokers

The real estate industry is rocked across the country with a class action lawsuit against the National Association of REALTORS and most of the top real estate franchises in the country filed in 2019. It is the largest class action lawsuit in history! The lawsuit originates with a seller, Christopher Moehrl in Edina Minnesota who questions the compensation paid to real estate brokers. The case has been settle with many of the defendants.

Christopher Moehrl is a resident Minnesota who listed his home for sale in 2017. The home was listed on the Northstar MLS. He was represented by a REMAX franchisee and the buyer was represented by a Keller Williams franchisee. As part of the transaction, he paid a total broker commission of 6%. The

buyer's firm was paid 2.7% of the total commission paid by the seller. He started wondering why he was paying so much money to the buyer's agent because it wasn't evident that the commission matched the work he perceived.

The lawsuit claims a conspiracy with the National Association of Realtors, MLS's, and member brokers/firms. Briefly, the lawsuit claims:

- Realtors/MLS rules require all brokers to make a blanket non-negotiable offer of buyer broker compensation when listing on the MLS.
- The consumers are saddled with a cost that would be borne by the buyer in a competitive market.
- Without the rule, the buyer brokers would be paid by their clients and would compete to be retained by offering a lower commission.
- The Realtors and firms have kept buyer broker commissions in the 2.5 to 3% range for many years despite the diminishing role for buyer brokers.
- Buyer broker costs are similar regardless of the price of the home,yet they are paid based on the price of the home.
- Home sellers are forced to pay commissions to buyer brokers, their adversaries, in negotiation to sell their homes, therefore substantially inflating the cost of selling their homes.
- Home sellers have been compelled to set a high buyer broker commission to induce buyer brokers to show their homes. Home sellers have paid inflated buyer broker and total commissions.
- Price competition among brokers to be retained by home buyers has been restrained.
- Competition among home buyers has been restrained for the inability to compete for the purchase of a home by lowering the buyer broker commissions
- Real estate firms have increased their profits by inflated total commissions.

In addition, the lawsuit claims:

- A comparison of commissions paid in other countries with those of the US shows brokers in US are much higher.
- Commission rates have doubled over the years because house prices have risen. Rates are more than double the rate of inflation.
- There is a great conspiracy between the member firms and the MLS/Realtors.
- The buyer brokers are entirely compensated by home sellers.
- The structure of the MLS is such that an alternative MLS would not survive so there is no competition

- Realtors advise MLS to enter into non compete agreements with third party websites such as Zillow..

The example using the commission in other countries includes the UK. There is no MLS in the UK. The listing fees have sun since 2011. The seller pays on ly the listing agent who does not have the MLS fees and Realtor dues. Buyers find a house and pay a solicitor (attorney) to write up the transaction. The taxes for a buyer can be almost 15%. It is not effective to compare the two countries.

The class action lawsuit, includes a script used to train real estate agents dealing with a seller who wants to reduce the buyer’s firm commission to save money. The training script at a major franchise gives agents a response to a seller. “When you reduce the commission, you reduce the incentive for that agent to bring a buyer to your home.” The script goes on to say, “If an agent has 10 different houses to show, nine of which have an X% commission and one of which comes with a lower commission. Which house do you think they are going to show?” The lawsuit is trying to show collusion between firms.

This lawsuit is quite far reaching touching most of the major franchises and the National Association of REALTORS. It will most likely be in the courts for many years to come. No formal changes have been suggested by NAR to member MLS’s

The Department of Justice has opened it’s own investigation in 2019 into real estate sales apart from the lawsuits. They are looking into whether or not MLS services prevent competition in the real estate fee structure. The question is whether agents are engaging in anti competitive practices. One such practice is that brokers in some areas can filter listings by the commission offered. In some markets, agents have been trained to only show properties with a certain minimum commission.



*If you drop an ice cube into a hot cup of tea,  
it might affect the temperature of the tea ....  
and it might not!*

# Chapter 5

## Fair Housing and Anti Discrimination

There are times when “disclosure” is against the law. There are Federal, State and Local Fair Housing and Anti Discrimination Laws.

### What is a protected class?

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

### Are you a member of a protected class?

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

## Federal Laws

The Fair housing and anti discrimination laws do not just protect “minorities.” They protect people that are discriminated because of certain reasons or “protected classes.” The laws created “protected classes” to identify groups of people that have been discriminated against. The Federal Fair Housing Act prohibits discrimination based on protected classes for the sale or lease of residential property. It prohibits discrimination in advertising, lending, real estate brokerage, and certain other services in connection with residential transactions.

The protected classes are:

Race                      Color                      Religion                      Sex (LGBTQ+ added)                      National Origin                      Familial Status                      Handicap/Disability

There are exemptions to the federal laws but they apply very rarely. There is no exemption for any transaction involving a real estate licensee.

# Washington State Law on Discrimination

In Washington State there is the Law against Discrimination. The law prohibits unfair discriminatory practices in real estate transactions including the sale lease, appraisal, brokering, exchange, lending and offering real estate brokerage services. The law covers all real estate transactions, not just residential housing as the Federal Law does. The Washington law on discrimination is stricter and has no exemptions.

## Washington State Human Rights Commission (WSHRC)

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

These are some of the issues/ cases and examples of what you should know regarding the protected classes in Washington state.

### **Race /Color in Housing**

It is illegal to discriminate on the basis of race or color.. Traits typically associated with race are included. For example, traditional hairstyles that have been associated with race are protected.

### **Creed/Religion in Housing**

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

### **National Origin**

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

### **Sexual orientation and Gender Identity in Housing**

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

*A resident in an apartment building worked as the property caretaker while the landlord resided in Florida. The resident said that the landlord visited the Hawaii property to hold retreats for his business and first met her in 2012 when she was using a name traditionally associated with the male gender and presented as male. After the landlord saw her expressing her gender identity for the first time in person, however, the caretaker claimed that the landlord harassed, threatened, and forced her off the property. At the hearing, the resident testified that she suffered emotional distress as a result of the landlord's actions. An expert on bias crimes against lesbian, gay, bisexual, and transgender individuals testified about the pervasive stigmatization of transgender individuals and research indicating that transgender women are at greater risk of being subjected to violence. In light of this heightened risk of harm, an expert said that transgender individuals have reason to take threats of violence seriously.*

*March 2019*

*The Fair Housing Coach*

## **Sexual Harassment in Housing**

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

*The complaint alleged that an employee, a Level 3 registered sex offender, also harassed and assaulted female residents. The complaint alleged that the landlord engaged in harassment that included making unwelcome sexual advances and comments; engaging in unwanted sexual touching; offering to grant tangible benefits—such as reducing rent amounts—in exchange for engaging in sexual acts; refusing to provide needed maintenance services or taking other adverse housing actions against female residents who resisted or objected to his unwelcome sexual harassment and intimidating female residents by monitoring them from outside their apartments or rooms. After the owner received notice of the employee’s alleged sexual harassment of residents, the owner failed to take action to prevent future harassment. Sept 2019 The Fair Housing Coach*

## **Familial Status**

This case has not gone to court yet. It is a good practice to have two “persons” per bedroom. Federal fair housing laws and in WA state do not have occupancy standards.

### ***Apartment Building refuses to rent to families with children***

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

*The mother of two minor children filed complaints alleging that the apartment building owner employed a policy limiting the number of children that could rent apartments. The Owner’s business voicemail announced the policy to people who phoned looking for housing. Their policy allows only one child in a two-bedroom unit and two children in a three-bedroom unit.*

*“Landlords and property owners don’t have the right to deny housing to families simply because they have children. The Fair Housing Act generally prohibits landlords from limiting housing to families with a certain number of children. HUD is committed to enforcing the Act to ensure that families with children are given equal housing opportunities,” said Paul Compton, HUD’s General Counsel. September 2019 The Fair Housing Coach*

### ***Families allowed to use common spaces***

*In Las Vegas, HUD recently approved a settlement between a resident and the owner and manager of a housing community to resolve allegations of discrimination against families with children. A mother filed a complaint alleging that the property manager made her son and other children leave a recreational area of the complex after observing the children playing without their parents observing. The woman’s complaint also alleged that the community maintained an unwritten policy that children couldn’t use common spaces without adult supervision.*

*Under the agreement, the community agreed to pay \$5,000 to the mother and to allow her to terminate her lease without penalty if she chose to do so. The community also agreed to provide fair housing training for its employees and circulate a letter*

to residents stating that children do not need to be supervised in order to use the development's common areas. Individuals renting units at apartment complexes have a right to use any amenities that are available, and this applies to families who have children.

August 2019

The Fair Housing Coach

### **Mother and Children Denied sale of Condo in King County, Washington**

*The King County Office of Civil Rights resolved a fair housing case involving familial status discrimination where Respondents paid the Charging Parties \$18,500 and received fair housing training.*

*A mother and her two children, ages 11 and 14, had dreamed of buying a condominium in their favorite subdivision on the Eastside. When a unit became available in the subdivision, they eagerly contacted their broker to arrange a walk-through. When they arrived at the condominium, the unit owner told them that children weren't allowed in the subdivision. They attended an open house at the condo the next day to speak to the owner's real estate agent. They were terribly disappointed when the real estate broker confirmed that children were not allowed to live in the subdivision.*

*Under the local, state and federal fair housing laws, it is illegal discrimination to deny housing to families with children under the age of 18. There is an exception under the federal Housing for Older Persons Act (HOPA) that allows housing for persons age 55 and older, or 62 and older if certain conditions are met; housing complexes that qualify for this exception should be obvious from their signage and publications. However, this condominium subdivision did not qualify for that HOPA exception. KCOCR took the complaint and confirmed the owner's statement.*

*The owner noted that she had been on the condo board a few years earlier and that it was her understanding that there was a no children policy. The owner's real estate broker denied telling the potential buyers that children could not live in the subdivision; however, OCR investigators located another woman with children who was also told by the broker at the open house that children were not allowed to live there. OCR resolved the case with the real estate agent and the real estate company for \$16,500 before the investigation was completed. The owner paid the potential buyers an additional \$2,500 after a finding of Reasonable Cause was issued by OCR. All Respondents took fair housing training. This cost the broker and their company a large sum.*

### **Single Woman fights discrimination in Tacoma, Washington**

*In May of 2004 a young woman said she encountered discrimination when she tried to buy a house in Tacoma ... not because of her skin color, age, religion or ethnicity. She was discriminated because she is single. She made an offer on a lovely two story house in Tacoma. "It was my dream house. A house that I wanted to purchase to raise a family," she said. The asking price was \$196,000. She offered \$199,000 and was pre approved for the mortgage.*

*The Listing Agent, when responding to her offer said, "Your guys deal was a better one but they decided to go with the other deal just because it was a married couple and they felt they would be a little more stable.... They were a bit nervous about it being a single woman trying to buy the house and they were just concerned it would come down to financing and something could possible go wrong."*

*It was discriminatory. The Federal Fair Housing act clearly states that it is unlawful to discriminate based on sex and familial status. The case was settled with the real estate company prior any court hearing. The sellers of a house are liable under Federal,*

*State and Local Fair Housing and anti discrimination laws. The buyers have the right to purchase property regardless of who they are or what their background. The real estate company settled with the buyer after it hit the news.*

## **Honorably Discharged Veteran and Military status in housing**

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

## **Handicap/ Disability**

A housing provider including landlords, property managers, homeowners, and condominium associations cannot discriminate against persons with disabilities and must reasonably accommodate persons with disabilities.

Substance Use Disorder is covered under the definition of “disability. Excluding individuals who take medications for Opioid use Disorder from housing may be discriminatory according the WSHRC.

Your housing provider may not:

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

A reasonable accommodation could include an assistance animal. Fair Housing law does not have a training requirement for such animals. To have an assistance animal, the person must have a disability, request the animal as a reasonable accommodation, and must be able to show that the animal is necessary because of the person’s disability by presenting a note from a medical provider. Emotional support and comfort animals would be included. Fair housing does not limit the species of service animals.

*A resident in a California apartment claimed that her lease was illegally terminated based on her disability. The resident claimed that the community terminated her lease because throughout her tenancy, she experienced multiple medical emergencies that required the assistance of an ambulance to transport her to the hospital. The property manager allegedly reported that other residents had complained about these emergencies. Housing providers cannot terminate or decline to renew a lease simply because they disfavor tenants with disabilities. Nov 2019 The Fair Housing Coach*

## **Hate and Bias crimes in Housing**

Hundreds of hate crimes are reported in WA state yearly. According to the FBI hate crime statistics 2017, 27.5% of all hate crimes across the US occur in or near residences. In WA a person is guilty of malicious harassment if he or she maliciously and intentionally commits causes injury or damage to property or threatens a person or group of persons because of her or her *perception* of the victim’s race, color, religion, ancestry, national origin, gender, sexual orientation or handicap.

# **Local 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.

## Seattle Anti Discrimination Laws

### Illegal discrimination is when:

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

### Seattle currently includes these protected classes:

Age ** Ancestry Color Creed	Disability Gender Identity Parental status * Political ideology	Race Religion Sex Sexual Orientation	Use of Section 8 certificate Use of service animal Veteran or Military status
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\*Not applicable to Employment or Fair Contracting cases

\*\*Not applicable to Public Accommodations cases

### Retaliation

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

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

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

### Harassment

Seattle's anti-discrimination laws also protect you from harassment. Harassment is conduct that is directed at you because of your race, religion, gender, sexual orientation, disability, national origin, etc. Harassment can include: Threats, Slurs or epithets, Threatening acts, Posting offensive materials on walls, bulletin boards, e-mail, etc. To be considered harassment, conduct must be serious and frequent enough to create a hostile environment and Interfere with your ability to work, live, or enjoy a public place.

*Some people believe that a seller has the right to sell to any buyer they choose. But, in fact, when we “own” property we have a “bundle of rights.” Just as we cannot put an industrial plant in a residential neighborhood or construct an addition that is 30 feet high in a subdivision, our rights are limited by federal, state and local laws, codes and restrictions. Sellers are required to obey the fair housing and anti discrimination laws when they sell their property.*





## Questions/statements would be illegal under Fair Housing laws!

Do the buyers have children?

What is the race of your clients?

Will the family go to the church next door?

Is the buyer gay?

Does your son have a mental disability?

This is a family neighborhood. I don't think they would fit in.

Is the buyer single?

Are the buyers married? (marital status is protected. Ask how they want to take title.)

Are the buyer's seniors?

A married couple is more stable than a single woman. (major lawsuit on this statement)

This would not be a good neighborhood for disabled children.

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

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

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

# Love Letters from Buyer to Seller

Whether using a poem, photo collage or a love letter, buyers are trying to “promote” their offers to the sellers. Especially when the market heats up and buyers may be competing with other offers that may even be higher, writing a personal letter to appeal to the sellers emotionally to accept the buyers offer is becoming more common. The love letter is an attempt to entice the seller into accepting an offer based on factors that have nothing to do with the purchase and sale agreement. There are articles all over the internet, samples of letters, and even templates.

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



The love letters most often describe the buyers as a “married couple with children.” Familial status is a protected class in the Federal Fair Housing Act. Familial Status and Marital Status are protected in almost every State and Local anti discrimination law. If a single woman, a gay couple with no kids, a man who will not have children, or a senior are bypassed because the seller goes with emotion and chooses the “little family,” the seller would be discriminating against the other buyers who have just as much right to purchase the property. Many times the letters include photos of the little family and their pooch. The sellers could be encouraged to discriminate based on race, color, religion, sex, national origin, familial status or disability based on the photo.

Love letters that are highlighted in articles throughout the internet most often come from a husband and wife with children. Many are accompanied by photos. Examples of love letters straight from an article encouraging them include:

“Dear \_\_\_\_ Family,

My name is Christine and my husband’s name is, Nik. I was born and raised in \_\_\_\_city and Nick was born in \_\_\_\_\_. We have a wonderful, smiling 4 month old, Lily. We spent our dating time in Capitol Hill and enjoyed it very much. Green Lake, Ravenna and Maple Leaf are where we hope to raise our children and put down long term roots. When we started our house search, proximity to this neighborhood was our priority. You home is the first we have seen that genuinely meets all of our wants and needs. We can picture ourselves drinking coffee while watching our children play in the backyard. We would be deeply grateful to you if our offer is chosen. Sincerely, a married couple with child”

“Dear Sellers,

I am a single woman who is thrilled about purchasing your home. I have lived in the neighborhood for many years and have saved up money to purchase my first house. This house is perfect for me and my commute to work, my volunteering at the Austrian Club, and the proximity to my diverse family. I have a stable position at planned parenthood and I volunteer to help the homeless. Sincerely, the single buyer”

Are the letters discriminatory? Consider how often a real estate agent would encourage buyers that originate from another country, are disabled, have misunderstood religious beliefs, is LBGT? Consider...

- If you were a single man who wanted to buy a house within good commuting distance to work and on more than one house you were turned down because the sellers sold to a little “family” for less than your offer. or
- If you were two women who just took advantage of the new same sex marriage equality law in Washington State and you lost on these three houses because the sellers sold to a “family.” or
- If you come from a proud immigrant family and you have an accent and a name that is often mispronounced and your offer was not accepted more than once from sellers.

Sometimes... ok... maybe often... the “perfect family” is not perfect. The husband could be abusive, the son could be a sex offender, the daughter might like to deal drugs. Choosing an offer based on a “sweet” letter and a nice photo could be just what the “family” was hoping for.

Everyone, regardless of their background, beliefs, health/disability, etc, has the right to purchase a home in the area chosen. The seller violates anti-discrimination laws when a seller chooses one buyer over another using any information that could be construed as discrimination. The buyers that lost the property have the right to file a case of discrimination. Real estate agents are bound by federal state and local discrimination laws.

As a selling agent, when you pass on the letter to the sellers and the seller’s agent, you cannot claim you had no knowledge of the contents of the letter. As a listing agent, if you pass the letter on to the sellers, then you are giving them a reason to discriminate. The sellers may not understand the laws. Real estate agents have a duty to understand the laws and cannot claim “ignorance” when it come to fair housing. It is important for real estate agents to know the laws and instruct the sellers to “Choose the Paper .. not the People” when choosing a buyer for the property.

## Implicit Bias affecting Discrimination



Implicit bias is an unconscious association, belief or attitude toward others in a social group which can result in stereotyping others like them.

Even without knowing it, everyone has their own implicit biases that are a result of learned association and social conditioning. These biases affect decisions that people make about others that can be negative or positive. Most people don’t realize that they exist but by being more aware of decisions made in your real estate business.

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

quickly than the opposite pairings. The same associations were marked by 80% of the women in the study.

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

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

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

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

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

# Chapter 6

## Property Disclosure

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

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

The form is a vehicle for the seller to disclose any information about the structure and title of the property. If there are facts that are not asked on the form, the seller can attach additional pages. The liability for inaccurate disclosure by the seller has been fought in the courts. The buyer should definitely not rely on the form when making decisions to purchase. It is important for a buyer to get a thorough home inspection and anything that arises as a concern should be investigated further.

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

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

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

If you happen upon a prospective listing whereby there was a “negative stigma” that could affect a buyer’s decision to buy, it is important to contact the broker and corporate attorney about disclosure to the buyer! The Law of agency is not connected to the property information law.

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

## **Internet availability Disclosure**

Washington State legislature did pass a change to the Property Information Disclosure law that adds the availability of internet access as a disclosure item.

## **Lead Paint Disclosure**

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

## **Mold Disclosure**

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

## **Carbon Monoxide Detectors**

Carbon Monoxide is a poisonous gas that cannot be seen or smelled and can kill a person in minutes. It can quickly build up to unsafe levels in enclosed or semi-enclosed areas. Generators in garages or near intakes and use of charcoal or gas grills indoors are common causes of CO poisoning during power outages. Problems with exhaust on furnaces can also be a cause.

Beginning in January 2011 WA state law requires Carbon Monoxide alarms to be installed in all new single family homes and residences including apartments, condominiums hotels, and motels. Existing homes, apartments, condominiums, hotels, motels must have them installed by January 2013. Owner- occupied single family residences, legally occupied before July 2009 are not required to have CO alarms until the property is sold. In that case, the seller is required to equip the residence with CO alarms before any other person legally occupies the property.

In Washington state over 300 people were treated at hospital emergency rooms or CO poisoning and 8 people died during a serious December 2006 windstorm. Between 1990-2005 over 1000 WA residents were killed by Carbon monoxide poisoning.





Anna Faris  
@AnnaKFaris

Follow

I'm not quite sure how to express gratitude to the north Lake Tahoe fire department- we were saved from carbon monoxide- it's a stupidly dramatic story but I'm feeling very fortunate



*Anna Farris, an actress known for starring in the TV show "Mom" is originally from Washington State. Over Thanksgiving 2019 she rented a home with her family at Lake Tahoe, a popular vacation destination. Two family members on the multi-generational vacation felt ill and left the holiday dinner to get checked out at a local hospital, where they found out they had carbon monoxide (CO) poisoning, according to Erin Holland, public information officer for the North Tahoe Fire Protection District.*

*The fire department responded to the rental home — nine people were checked out and treated there, and two additional people were transported to a hospital.*

*The actress tweeted a photo of the family's empty table with several half-empty plates: "I'm not quite sure how to express gratitude to the north Lake Tahoe fire department - we were saved from carbon monoxide - it's a stupidly dramatic story but I'm feeling very fortunate"*

*There was no carbon monoxide detector in the rental home.*

*When firefighters arrived and tested carbon monoxide levels, they found readings as high as 55 parts per million (ppm), more than five times the maximum recommended indoor levels of 9 ppm.*

*"The youngest member of the family, had they been exposed longer, could have gone into a coma," Holland said. "Every minute makes a difference. We're really glad this story had a happy ending."*

# I feel the earth move under my feet

About 13% of Washington has hazardous slide areas. There is a lawsuit in Washington where one issue is that they are claiming the agent didn't suggest they get expert advice on matters above the agents expertise focusing on the issue of a house built on a hill that may be unstable. Don't hesitate to recommend an inspection for anything a buyer might be concerned about including hillsides and wetlands.

Washington State conducts a Geologic Survey to maintain an assessment of the volcanic, seismic, landslide, and tsunami hazards in Washington. That assessment must include identification and mapping of hazards, as well as an estimation of the potential consequences and the likelihood of a geological hazard event. While performing its existing obligation of mapping volcanic, seismic, landslide, and tsunami hazards, the state Geological Survey is required to apply the best practicable technology, including light detection and ranging (Lidar) mapping. Further, the Survey is required to acquire new data, coordinate with state and local government agencies to compile and share data, and create and maintain a publicly available database of Lidar and geological hazard maps and geotechnical reports prepared while acquiring the new data.

Information on the geology including landslide hazard, tsunami evacuation and earthquakes is available at the Dept of Natural Resources website.



In early 2022 a house in the Magnolia area of Seattle slipped off it's foundation during a record rain storm. It is located on Perkins lane which has previously been the site of several homes that have been destroyed on the hill. The owners had to be rescued and were not seriously injured. When they purchased the house ten years ago, a geologic survey done. In the past couple years they had the retaining wall in the backyard rebuilt.

## Referring Third Party Vendors

When a real estate broker refers a third party vendor it is important to stay within the laws to minimize risk. There are times when the transaction is outside the expertise or scope of the broker and it is important to refer clients to a competent third party vendor.

When referring home inspectors, the designated broker must establish a written office policy that includes a procedure for referring home inspectors to buyer or sellers. The policy must address the consumers right to freely choose a home inspector of their choice and prevent any collusion between the home inspector and the real estate broker. The broker referring a home inspector to a buyer or seller with whom they have had a prior relationship, including, but not limited to, a business or familial relationship, then full disclosure must be provided in writing prior to the buyer or seller using the services of the home inspector according to WAC 308.124C-125(9)a

When referring a client to a vendor, the vendor must have the appropriate license when it is required according to RCW 18.235.130(9)



# Chapter 7

## Writing Purchase and Sale Contracts\*

### 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 Buyers inspection report to seller unless the seller requests delivery."*

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

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

**What if seller requests it?**

If seller requests a copy of the report. Make sure that you have WRITTEN instructions from the seller to provide the report. 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 seller cannot pay the buyer 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?**

**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. When is an interpleader is appropriate.

What is an interpleader? It 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 in Spokane County, for example, 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.

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.



# Chapter 8

## Multiple Offer Situations



### Multiple Offers on a Listed Property\*

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.”

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 enter the world of the unauthorized practice of law.

#### Seller Options

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

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



**All offers MUST be presented**

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

**The listing broker sorted the offers from best to worst.**

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

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

**Disclosure of Multiple Offers**

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

**Counter offers**

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

**Avoid selling the house twice**

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

**Avoid Discrimination**

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

**Escalation Clauses**

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

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

## Offer Accepted

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

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

## Timely Present All Written Offers



The market for properties for sale has been incredibly active as we moved into the 2020’s. It is important to look for the best “apple in the bunch” when a seller receives multiple offers. Two factors are

### **Offers must be presented in a Timely Manner**

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

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

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

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

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

The offers on a property must be presented to the seller. It is not right to withhold an offer hoping for another one to be written. It is clear that sitting on one written offer while the seller accepts another offer is a very bad practice and clearly violates the law.

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

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

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

Often there is a date chosen to present all offers to the seller. An offer may have an expiration date prior to that date. If seller is unavailable or refuses to review an offer prior to expiration, then listing broker's file should reflect those circumstances. Even if seller set an offer review date in the future, broker must notify seller if an offer comes in from a buyer with an expiration date prior to seller's established review date. Seller must be informed that an offer will expire, and thus be void, before the pre-determined offer review date. It is always up to seller whether seller will review an offer earlier than the review date listed.

Any written offer, notice or communication, to or from a party, if it is within the scope of brokerage services, should be presented in a timely manner. The duty to timely present all written offers persists even after mutual acceptance.

# Chapter 9

## Advertising Requirements

### Advertising Laws

License law has required that the name of the real estate firm as licensed be on all advertising. But, many real estate agents were putting the name of the office so small and hidden in their advertising that it was nearly impossible to identify the actual real estate office where their license was hanging. The new license law changes in 2010 specify that the Firm Name must be on all advertising so that it is very clear to the consumer.

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

- (1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.
- (2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:
  - (a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.
  - (b) Not use a name, title, or brand which suggests a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."
  - (c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."
  - (d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

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

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

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

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

If the broker or team has an "assumed name" that was registered by the designated broker, then that broker or team can use the approved name and is not required to have disclosure of the firm on advertising. For example, a team might have the Double Team name instead of using the firm name or the designated broker has a group of agents working on another particular focus of real estate and does not want the firm name used.

# Social Media Advertising Guidelines\*

Licensed entities can use the internet in multiple ways to contact consumers about real estate services and to advertise properties or their services. More ways to use the internet are likely to be invented. Disclosure will help to ensure that online consumers know when they are dealing with a licensed entity, who they are and where their primary business office is located.

## Disclosure

**Licensed Firm Disclosure** should contain the following information:

- The firm's name or assumed name(s) as licensed or registered with WA Real Estate Dept of Licensing. If not a licensed firm doing business in the State of Washington, the city and state in which the firm is located.

**Licensee Disclosure** should contain the following information:

- The licensee's name as shown on their license as issued by the WA Real Estate Dept of Licensing.
- The registered firm name or assumed name in which the licensee is affiliated as registered with WA Real Estate Dept of Licensing.

**Full Disclosure** refers to both "licensed firm disclosure" and "Licensee disclosure."

## Internet Guidelines

All internet related advertising that consumers can view or experience as a separate unit should require full disclosure. The burden of proof of such full disclosure falls on the licensee, the firm and the designated broker when addressing a consumer complaint. This disclosure does not apply once an agency relationship has been established with a buyer or seller. Examples of online communications include:

### **Social Media and Banner Ads**

Full disclosure should be prominently displayed and easily understood and be no more than "**One Click Away**" from the viewable page. Each real estate firm should have and maintain a written policy regarding their licensee's use of social media. Banner ads must have one click away disclosure unless it is on the ad.

### **The Web**

Whenever a licensed entity owns a website or controls its content, every viewable page should include full disclosure. A viewable page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages. If you give permission for a 3<sup>rd</sup> party to advertise your listings, it is important to maintain regular and thorough oversight to ensure that the information is correct. It is important to adhere to copyright laws.

### **Email, Newsgroups, Discussion lists, Bulletin Boards, chats or texts, instant messaging**

Such formats should include full disclosure at the beginning or end of each message. This would not apply to communications between a licensee and a member of the public provided that the member of the public has sent a communication to the licensee and the licensee's initial communication contained the disclosure information required above.

# Guidelines Brochure for Real Estate Brokers

The Dept of Licensing for WA State published an Advertising Guidelines brochure for real estate Brokers.

## Procuring Prospects Online

The internet poses additional potential problems that may require caution on the part of licensees when procuring prospects.

- A. Licensees maintaining individual websites should ensure that when listings expire, sell, or have a price change that the information is updated in a timely manner.
- B. Websites maintained by the MLS should be updated in a timely manner
- C. Information provided to third party websites should be updated in a timely manner. The licensee should provide written communication of any change of listing status to the publisher in a timely manner.
- D. Licensee shall not give the impression that they are licensed in jurisdictions where they have no license.
- E. Licensed entities should not advertise other licensed entities' listings without written permission. If given, the licensee should not alter the online display or any informational part of the listing without written permission of the Designated Broker or Listing Broker.
- F. Metatags are descriptive words hidden in a web site HTML code that search engines use to index the site. Most sites use common words such as real estate, Washington, city names, homes, houses, etc. Those uses are fine. Some website owners have also inserted competitor's names into the metatags, so that when a potential customer searches for their site, the competitor's site will also come up as a math. This should not be done. Courts have ruled that this constitutes trademark infringement.
- G. Licensees shall periodically review the advertising and marketing information on their website and update as necessary to assure that the information is current and not misleading.

These guidelines are subject to change at any time and as practice on the internet evolves, additional guidelines may be added. Licensees should be aware that all statutes and rules respecting advertising apply equally to the internet. This would include websites, email and any other potential online identification, representation, promotion or solicitation to the public that is related to licensed real estate activity. Licensees advertising on the internet should seek legal advice regarding compliance with local, state and national regulations. Compliance with WA Real Estate Dept of Licensing guidelines does not ensure compliance with other jurisdiction guidelines, laws or regulations.

# Chapter 10

## Property Management

### A. State Landlord Tenant Law Changes



In March 2020, due to the Covid 19 pandemic, Washington State Governor Inslee issued a proclamation to prohibit a number of activities related to evictions by all residential landlords operating residential rental property in the state. Since then, the Governor has issued multiple extensions. The legislature in WA has passed a number of bills to protect tenants and help with keeping more tenants in housing. In addition to the changes affecting the state, local jurisdictions also have passed laws affecting property management. This is just a summary of the bills that in some cases are many pages long. They can be accessed by Googling the bill number and the word tenant.

#### **Late rent Pay or Vacate notice**

Twenty six states have longer than WA State's 3 day pay or vacate notices prior to eviction. In July 2019, this was increased to 14 days. The Landlord must wait 2 weeks to start the eviction process. There is now a uniform eviction notice available to landlords written in plain language including information on civil legal aid resources available. It is a mandatory form required that is in multiple languages and must be in plain language.

Change in rent notice extended from 30 to 60 days.

Any tenant payment must apply to rent prior to any other charges.

Landlord must provide documentation for any damages.

Additional reforms to the eviction process in the bill include the use of judicial discretion in non-payment of rent cases, requiring consideration of factors beyond the tenants' control. In certain cases, landlords will be able to access the Dept of Commerce's mitigation fund for reimbursement of any shortfall in rent. SB 5600 Effective July 2019

#### **Increasing rent**

The timeline to raise rent has been extended to 60 days no matter how small or large the increase. This includes increases to base rent and other reoccurring fees not defined as rent. The increase cannot become effective prior to the completion of the term of the rental agreement.HB 1440 Effective July 2019

## **Notice when Converting Use of Rental**

Requires Landlords to provide a minimum 120-days written notice for a termination of tenancy when converting use, demolishing the property or doing substantial rehabilitation, or changing the use of the premises. If Landlord fails to provide this notice, they could be liable for up to three times (3x) the monthly rent to the tenant. HB 1462 Effective July 2019

## **Military Rental Termination**

The military clause clarifies the condition where service members can terminate rental agreements early or with less notice. The notice changes to 20 days after receiving orders. The tenant must provide a copy of the military orders. HB 1138

## **Right to Counsel for Indigent Defendants**

Subject to funding, indigent tenants in filed eviction cases can ask the court to appoint a lawyer to help them. A person is "indigent" if they receive public assistance or their annual income, after taxes, is at or less than 200% of the federal poverty guidelines.

## **Standards for Initial Payment Plans Landlords must offer Tenants**

Landlords, upon receipt of a tenant's written request, must permit the tenant to pay deposits, nonrefundable fees, and last month's rent in installments.

Rental period of 3 months or long, the tenant may elect to pay in 3 equal installments

In all other cases, tenant may elect to pay in two equal installments.

A landlord is not required to permit a tenant to pay in installments if all the deposits and fees do not exceed 25% or the first full months rent and payment of the last months rent is not required.

A landlord who refuses monthly installments is subject to a penalty of one months rent plus attorney fees.

If the tenant defaulted, the court must determine if they are low income or experiencing hardship to see if the landlord is eligible for Landlord Mitigation Program. HB 1694 Effective June 2020

## **Grace Period Prior to Assessing Late Fees**

The landlord may not charge late fees for rent that is paid within 5 days following its due date. The tenant may propose that the due date for rent be altered to a different date if the tenant is able to show primary income is not received until after the date rent is due. HB 2535 Effective June 2020

## **Tenant Protection during public health emergencies, Legal representation in Eviction, and landlord access to state rental assistance programs.**

For any rent fees or other charges assessed to a tenant that became due between March 2020 and December 31, 2021 the following rules apply:

Landlord prohibited from imposing late fees on debt, reporting the delinquency or an unlawful detainer based upon the debt to a prospective landlord, Landlord is prohibited from inquiring about or considering disclosure of a prospective tenant medical records unless to evaluate a reasonable accommodation or modification.

A prospective landlord is prohibited from:



Taking adverse for prospective Tenant’s nonpayment, denying discouraging application or make unavailable a rental based on prospective tenant’s medical history including prior or current exposure or infection to Covid 19. Inquiring about or requiring disclosure of a prospective tenant’s medical records unless necessary to evaluate a reasonable accommodation.

### **Landlords must give “Just Cause” for Eviction**

This is a law that affects almost all tenancy. It makes it much more difficult and extends timelines for landlords to evict tenants. Landlords cannot just evict a tenant for no reason. The moratoriums are ending, and this extends time limits and creates requirements to protect tenants. Sellers who remain for less than 3 months are exempt.

In this new law, landlords must give tenants one of 16 good reasons for ending rental agreements and evicting tenants. Among other things, this means there are no more 20-day notices to vacate for no reason. Before, landlords could refuse to renew month-to-month agreements for no reason, except in a few Washington cities.

These causes include failure to pay rent, landlord seeks possession (90 day notice), committing waste or unlawful activity, owner sells (90 day notice), Property demolished (120 day notice), property condemned, owner elects to stop renting premises (120 day notice), rental agreement expired and tenant doesn’t renew, breach of subsidized housing requirement, required to register as sex offender during tenancy (60 day notice) and more.

If a tenant fails to pay rent, then there is a process that begins with notice which must adhere to time frames, offering a repayment plan and then the Resolution Pilot Program prior to any efforts to evict a tenant. If the landlord and tenant fail then, the landlord file an unlawful detainer action. This process takes many months. The text of the law is very lengthy... It is difficult to follow. If a client gets into this situation, make sure that you refer them to an attorney who specializes in this line of work.

**The new Just Cause Landlord Tenant law can be found at:**

**RCW 59.18.650 Eviction of tenant, refusal to continue tenancy, end of periodic tenancy—Cause—Notice—Penalties. HB 1236 Effective April 2021**

### **Eviction Resolution Pilot Program ERP**

The Eviction Resolution Pilot Program (ERP) was mandated and applies to all counties in the state.

The objective of the ERP is to bring all parties to the table with trained eviction specialists, explore the amount of rent in arrears and circumstances, and discover a rang of other terms that might move to resolve the matter.

Prior to filing an unlawful detainer action for non payment of rent, landlord must provide notice to the tenant infoming them of the ERP along with a 14 day termination notice for nonpayment.

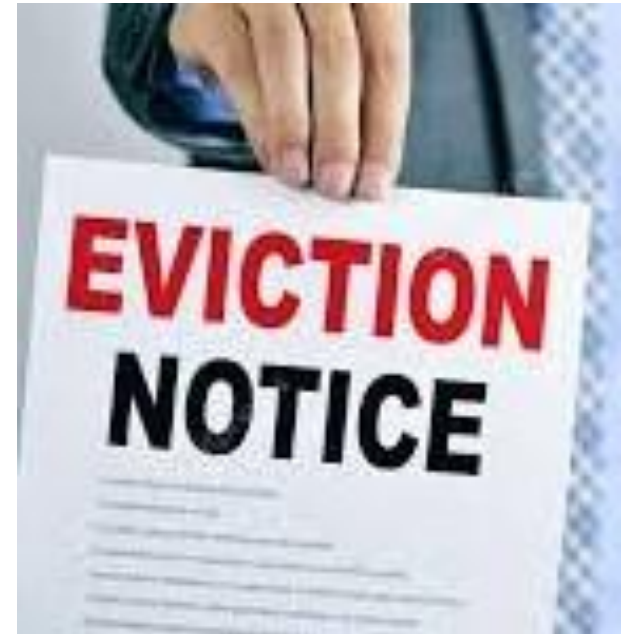
The ERP notice must include the following:

- Contact information for dispute resolution center, counting housing justice project or housing advocacy services.

- Notice that the information on multiple languages and tenant information on finding a lawyer is available

- The contact info or the landlord or the landlord’s attorney

- The statement “failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court.”



## **Landlord Mitigation for Unpaid Rent**

If tenant defaults on debt owed under repayment plan, the landlord may apply for reimbursement from the landlord mitigation program or file an unlawful detainer action subject to ERPP. SB 5160 Effective April 2021

## **B. “Rent Backs” No longer Under Landlord Tenant Laws**

If a buyer allows the seller to occupy the property after closing for one day or more, the buyer becomes a landlord. The same is true if a seller gives the keys to a buyer prior to closing! Trying to evict a seller or buyer as a tenant can take many months. Legal requirements must be met from offering a repayment plan to Eviction Resolution Mitigation. If the seller/tenant was offered occupancy without rent, this can become more complicated because the rent must be negotiated in a repayment plan?

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

Even though the NWMLS has forms 65 for occupancy prior and after closing, it is best for a broker to refer any buyer or seller to obtain legal advice prior to agreeing. The seller or buyer as a tenant could be in a situation through no fault of their own where they cannot move! It can become very complicated. There is a Legal Hotline video on Youtube at <https://youtu.be/Yz7Gt3bZq5U>

If you are involved in property management, it is important to know the laws that have been designed to help protect tenants. These are state laws affecting all jurisdictions. In the City of Seattle, there are other protections and landlord tenant changes.

As the eviction moratorium in the state and local jurisdictions, there will be tenants who have accumulated debt. There are programs to help tenants and landlords. It is best to consult an attorney if you are faced with needing to evict a tenant.

## **C. Designated Broker responsible for Property Management**

When a broker is performing property management, the ultimate responsibility falls on the designated broker. This can also include properties owned by the broker. The broker has a higher duty and may be handling consumer funds. The consumer could possibly go to the firm if there is a problem.

When marketing a property owned by a broker, it is only required to disclose that the broker is licensed. But, if there is a problem, the tenant could go after the real estate firm the broker is licensed under. So it is important to make sure that the designated broker is aware of all property management activities.

### **The Designated Broker must be in the Know!**

All properties managed by the firm must be supported by a written management agreement signed by the Designated Broker and the owner according to WAC 308-124D-215. This is important... the contract must be signed by the Designated Broker!

Property management agreements must include:

- The firm's compensation
- The type of property and number of units
- Whether or not the firm is to collect and disburse funds and for what.
- Authorization if any to hold security deposits
- Frequency of submitting summary statements to the owner

Each owner of property managed by the firm must be provided a summary statement as provide in the property management agreement for each property showing the carried balance, total rent receipts, owner contributions, other receipts, itemization of all expenses paid, number of units and ending balance. The firm may provide other service for the owners of properties with full disclosure of Broker's relationship with any parties providing services. Any amendment of modification to the property management agreement must be in writing.

An employee who is not licensed as a broker can do a limited number of property management activities of homes they don't own when working for a managing broker. It is important to also review the guidelines for unlicensed activity in the next section. An unlicensed person cannot advertise or tell the public that they are providing property management services or hold or authorize disbursement of trust funds. But, the unlicensed person can do the following.

- Delivering a lease/rental agreement
- Receiving a check made out to the real estate firm
- Showing a rental unit.
- Executing rental agreements under the direct instruction of the managing broker.
- Providing information about the rental unit
- Assisting with the administrative, clerical, financial or maintenance tasks.

An out of state landlord must have a representative in the county where the landlord has tenants so that issues about the unit can be resolved.

Landlords are required to provide tenants with information warning about health hazards associated with exposure to mold according to Washington State laws. They also must disclose about lead if built before 1978.

## **Property Management Trust Funds**

Trust accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285.

Interest-bearing accounts may be established for Property Management funds if in writing for an individual owner established in writing with interest to accrue to the owner and for only damage or security deposits for tenants of residential properties managed by the firm with interest paid to the owner under certain provisions under the Landlord-Tenant Act RCW 59.18.270.

Mortgage payments for the owner are not permitted to be deducted from the trust account if it contains security deposits or funds belonging to more than one client. A single check maybe be payable to the firm for property management fees and commissions if supported by a schedule of commissions. Property management commission shall be withdrawn at least once monthly.

When the property management agreement is terminated, the funds shall be disbursed according to the agreement including the damage or security deposited.

# Chapter 11

## Top Violations and Risky Practices \*

Dept of Licensing Investigations Report

### **Record keeping**

The number one challenge is that records for transactions are not complete and accessible. There is a DOL task force 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 in writing only to other Managing Brokers only. Auditors must be informed during audits.. 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 perform 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 all 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 firm or the broker has changed their address, it is imperative that the DOL is informed.

### **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 for 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.

# Risky Practices for 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 Cooperation \*

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

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 in the real estate industry is that that the conduct and professionalism of the broker on the other side of the transaction.

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 agents today, I will probably get about 20% to actually answer the phone even if they just called or emailed me. Only about 20% will call back after leaving a voice mail.

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



# Chapter 12

## Fraud in Real Estate Transactions

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

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

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

### White Collar Crime

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

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

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

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

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

## Wire Transfer Fraud

The most common scheme in the market today is Wire Transfer Fraud. Hackers will get into an agents email and follow it. They will harvest the information on the buyer, escrow and title and then just before title send an email to the buyer to deposit or wire funds into a different account than the escrow instructions. Once wired, the funds are completely gone. One clue is sometimes the escrow email will be a gmail account. This is so common today and there is no way for the agent or escrow to know the buyer has received an email with different escrow instructions. So EDUCATE Your buyer!

## Foreclosure Rescue

There are numerous foreclosure rescue schemes. Red flags for fraud and schemes include guarantees to stop foreclosures, a promise that the homeowners can buy the house back, promise to transfer the title or even eliminate the mortgage.

Other types of fraud include:

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

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

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

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

# The Legal Edge....Current Legal Topics in Real Estate

## Quiz

### Organizational Structures

1. The word "team" is covered in a section of real estate license law. True / False
2. A designated broker can delegate duties to a managing broker in writing, but the Designated broker remains responsible. True / False
3. An unlicensed assistant on a team can show properties to prospective clients. True / False
4. There is a separate license available from the DOL specifically for Transaction Coordinators. True / False

### Legislative and Dept of Licensing

5. You will renew your license by opening a Secure Access Washington account online. True / False
6. A seller must get consent if they are video and audio recording buyers in the house. True / False
7. All brokers will be required to take a 3 clockhour fair housing class for their next renewal and each subsequent renewal. True / False
8. The firm must keep complete logs for all transactions including failed sales. The log must include contracts and ALL documentation. True / False

### Agency Law

9. A Brokerage Services Agreement is required ONLY for agents representing real estate buyers. True / False
10. An agent is required to show buyers all properties available regardless whether there is compensation offered. True / False
11. An agent can list the identical property next door to their own listing even if it is a better value under the Law of Agency True / False
12. A buyers brokerage agreement can be exclusive or non exclusive. True / False
13. The listing agreement is a Brokerage Services Agreement between the listing agent and the firm.
14. Consent to Limited Dual Agency is on the Buyer Brokerage Agreement and the Listing Agreement. True / False
15. A Brokerage agreement must be signed "as soon as reasonably practicable" which can meet after showing a few houses to a buyer. True / False

### Real Estate Lawsuits

16. A seller can sue an agent if a listing fails to sell due to inflated list price seller requested on the listing agreement. True / False
17. Brokerage Services are real estate activities rendered on behalf of another with the expectation of compensation. True / False
18. The statutory duty to convey all written communications is triggered once a broker is rendering real estate brokerage services. True / False
19. A buyer should assume there is no remedy for misrepresentation by a seller if the buyer could have discovered the defect. True / False
20. The largest class action lawsuit has been filed in the country against the National Association of REALTORS. True / False
21. The lawsuit claims that there is conspiracy and collusion between brokers to keep total commissions high. True / False
22. The lawsuit claims that there is a diminishing role for buyer brokers yet the commissions have increased due to the market True / False
23. Unauthorized practice of law would occur if a broker preparing contracts falls below the standard of care of an attorney. True / False

### Fair Housing and Anti Discrimination

24. Everyone is a member of a protective class if characteristics are used to discriminate against him/her. True / False
25. Washington Law on Discrimination includes gender identity. True / False

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|--|--------------|
| 26. It is a violation in Washington to discriminate against individuals on the basis of military status.         | True / False |
| 27. A broker should not ask questions about a person's background when determining housing preferences.          | True / False |
| 28. "Does your son have a mental disability?" is a question that would be in violation of the Fair Housing Laws. | True / False |
| 29. A "love letter" can sway a seller to choose a buyer due to familial, marital status or cultural background.  | True / False |

#### Disclosure

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|--|--------------|
| 30. Availability of internet must now be disclosed on the Property Information Form.                                     | True / False |
| 31. The seller or landlord must disclose lead paint on a disclosure form if the house is built prior to 1978.            | True / False |
| 32. Tenants must be warned about the health hazards associated with mold by providing documentation from Dept of Health. | True / False |
| 33. Carbon Monoxide is identified by an unusual smell and it is harmless.  | True / False |
| 34. Buyers should take steps to follow up on any defect identified in an inspection report.                              | True / False |
| 35. All firms must have a written office policy about the referral of Home Inspectors.                                   | True / False |
| 36. About 13% of Washington has hazardous slide areas.   | True / False |

#### Writing the Purchase and Sale Agreement

- |   |              |
|---|--------------|
| 37. An Evidence of Funds form must be included in all transactions when the buyer is relying on contingent funds including hard money.    | True / False |
| 38. If a seller agrees on the purchase and sale agreement to consent to receiving the inspection report, the buyer must provide it.       | True / False |
| 39. If a buyer emails the inspection report to the seller without seller's consent, the buyer could be in breach of contract.             | True / False |
| 40. A seller is exempt from the landlord tenant act if they stay for less than 3 months.  | True / False |
| 41. The listing agent can determine that the buyer is in default and have the earnest money released to the seller.                       | True / False |
| 42. Interpleading is the process where the escrow and all parties negotiate the release of earnest money.                                 | True / False |
| 43. The buyer is responsible for identifying problems and providing the seller with a contractors estimate for items to be repaired.      | True / False |
| 44. If a seller has signed an offer, the listing agent is not required to present any other offers other buyers may write.                | True / False |
| 45. There is no law requiring notification on multiple offers, but it is a good practice to notify a buyer that their offer was rejected. | True / False |
| 46. Striking the paragraph to verify information takes a buyer's right to check sellers disclosed information.                            | True / False |

#### Multiple offers and Timely Presentation

- |  |              |
|--|--------------|
| 47. The seller must receive all offers and has the right to review each one in a multiple offer situation.               | True / False |
| 48. A seller can reject all offers in a multiple offer situation.  | True / False |
| 49. A seller can choose one buyer over another because they feel they will better "fit" the house or neighborhood.       | True / False |
| 50. The listing agent can review all offers and present in entirety only the top three potential offers.                 | True / False |
| 51. Offer review date on a listing means that the listing agent is NOT obligated to present offers in a "timely manner." | True / False |

#### Advertising and Social Media

52. The firm name as licensed must be on all real estate brokers advertising. True / False
53. When a broker advertises online, the firm name must be disclosed in a clear and conspicuous manner within one click. True / False

#### Property Management

54. The designated broker must sign all property management agreements. True / False
55. Washington state law has extended the time period for notification of tenants to increasing rent to 60 days. True / False

#### Risky Practices for Buyer and Selling Brokers

56. Any offer on a property listed for sale must be presented as soon as possible which should be within a day of receipt. True / False
57. Every action in a listing must be the seller's choice. True / False
58. Form 17 disclosure is a state law. It is in the best interest of the parties to not waive receiving the form. True / False
59. A seller must disclose on Form 17 anything in the environmental section regardless if they want to waive completing the form. True / false

#### Fraud in Real Estate Transactions

60. Ignorance does not save you in a court of law. True / False
61. A real estate agent could jeopardize their real estate license or even go to federal prison for committing acts of Fraud. True / False
62. The biggest fraud that is hitting real estate transactions is wire fraud. True / False



### Quiz for The Legal Edge.. current legal topics and Core 2024-2025

1		22		43	
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21		42			

I attest that I have read the materials and have answered the questions. The mandatory evaluation is attached!

Print Name \_\_\_\_\_ Company \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

PROFESSIONAL Direction, Email: [clockhours@gmail.com](mailto:clockhours@gmail.com)



# Mandatory Evaluation

Did you read the material in the booklet on this date? YES / NO  
 Did you complete the quiz and attach answer sheet? YES / NO  
 Did you pay Tuition ? 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 15 hour class should take about 12.5 hrs.. 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. \_\_\_\_\_

## The Legal Edge... current legal topics in real estate Includes Core 2024-2025

Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
	Email	
License Renewal Date		Dates Class taken

*Thanks for taking this class! I really appreciate the agents that take clockhours from my school. Natalie Danielson*

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**www.clockhours.com**