

Advanced Practices
Section 1 Agency



When are you an Agent?

by
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Please Read this First! Thanks!



Clockhours by Mail

1. This is Section 1 of Advanced Real Estate Practices. The handout is only to be used for the class and cannot be shared.
2. The course has been divided up into one hour sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
3. **Answer** the questions in the Workbook which is the second download.
4. If you have any questions regarding the material or the questions, don’t hesitate to email Natalie Danielson.
5. **Scan and EMail** Answer Sheets and Evaluation to Professional Direction at clockhours@gmail.com There is a link to pay on the front of website.
6. The certificate will be mailed usually within a day of receipt of quiz and eval.. .

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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When are You an Agent?

Curriculum

Chapter Hours	Major Topics	Method of Presentation
1 1 hour	What is an Agent? Definitions in Law of Agency Creating Agency	Read material Answer Quiz
2 1 hour	Who the Agent Represents Duration of Agency Presumption of Buyer agency In house Transactions Transaction Specific	Read material Answer Quiz
3 1 hour	General Duties of the Agent Confidential Information Material facts	Read material Answer Quiz
4 1 hour	Duties of the Seller's Agent Duties of the Buyer's Agent. Dual Agency	Read material Answer Quiz
5 1 hour	Compensation Vicarious Liability Imputed Knowledge	Read material Answer Quiz

When are you an Agent?

By Natalie Danielson

Introduction

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

This class is not meant to make interpretations of the Law of Agency. The real estate licensee is instructed to direct any questions to his or her designated broker or corporate attorney about the Law of Agency. The author is not an attorney.

Though the title of real estate salespersons has changed to Broker, Managing Broker and Designated Broker, all real estate brokers are all still real estate agents and fall under the Law of Agency.

Objectives

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

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

What is an Agent?

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

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

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

There is no federal law or statute that all real estate licensees in the country must follow.

Effective January 1, 1997, the Law of Real Estate Agency defined our role by statute in Washington State. The legislation defines the law of agency for real estate licensees in our state for the first time. The Law of Agency is updated on January 2024.

The basic objectives of the Law of Agency are:

1. Clarify the law of agency as applied to real estate brokers when they work with clients in property management, commercial and residential sales, leasing and business opportunities.
2. Make it clear with consumers the agency relationship with brokers and that it is clear in writing.
3. Reduce instances of dual agency. Disclosure and discussion can help reduce unintended dual agency. Limited dual agency is defined.
4. Limit the liability of brokers and agents under the doctrine of vicarious liability and imputed knowledge.

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

The Law of Agency applies to brokers in all areas of real estate.

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

Agency Law Amended effective Jan 2024

The Law of Agency has been amended a few times over the years to conform to the way brokers do business and to clarify terms.

In January 2024, there are changes to the law. These changes are noted in this class as they can and should be implemented by brokers as soon as possible. In summary the new changes include:

- Requirement to have a written Brokerage Services Agreement signed by the buyer “as soon as reasonably practical” after a broker commences rendering brokerage services for compensation or the expectation of compensation.
- Limited Dual Agency must be in writing and disclose limitations inherent in dual agency relationships and explain to the consumers.
- The pamphlet on the Law of Agency has been modified so that it is in a narrative form that is easier for the consumers to understand. It is not required to be specific size and type.
- The statutory duties in the Law of Agency between a broker and all parties are clarified. There was a lawsuit where the decision based on the way the Law of Agency WAS written determined that the duty of “honesty and good faith” was only owed to the client. The amendment to the Law of Agency clarifies that certain duties are owed to ALL parties not solely with the broker and the client.

Law of Agency Definitions

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

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

(1) "**Agency relationship**" means the agency relationship created under this chapter between a firm and a principal.

(2) "**Agent**" means a broker who has an agency relationship with a principal, including the firm's designated broker and any managing broker responsible for the supervision of that broker.

(3) "**Broker**" means broker, managing broker, and designated broker, collectively, as defined in Chapter 18.85 RCW, unless the context requires the terms to be considered separately.

(4) "**Brokerage services agreement**" or "services agreement" means a written agreement between a real estate firm and principal that appoints a broker to represent the principal as an agent and sets forth the terms required by RCW 18.86.020 and 080.

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

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

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

(7) "**Buyer's agent**" means a broker who has an agency relationship with only the buyer in a real estate transaction.

(8) "**Commercial Real Estate**" has the same meaning as in RCW 60.42.005. A fee title interest or possessory estate in real property located in this state. The exceptions include property with single family residential unit or 4 or less multifamily or unimproved development under zoning, farm timberland or agricultural property. If property has single family residential units like condos or time, for example, that can be sold on a unit basis.

Real estate will be considered commercial real estate if the commission agreement provides or if it meet the definition contained in this section.

(9) "**Confidential information**" means information from or concerning a principal that:

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

(10) "**Limited Dual Agent**" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

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

(12) "**Principal**" means a buyer or a seller who has an agency relationship with a broker.

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

(14) "**Real estate firm**" or "firm" have the same meaning as defined in Chapter 18.85.

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

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

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

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

(17) "**Seller's agent**" means a broker who has an agency relationship with only the seller in a real estate transaction.

Note.. that the word "subagent" is not longer in the definitions. Dual agency has been now changed to "limited dual agency."

Agency can be created by express or implied agreement.

An agency relationship can be created by contract or by conduct. Although the relationship must be voluntary, it can be created unintentionally or accidentally. According to the Law of Agency, a broker must get a signed Brokerage Services agreement as soon as reasonably practicable when you perform brokerage services.

Implied agreement

Agency can be a result of words or conduct. Courts usually find implied agency where the intentions of the agent and the alleged principal are shown by their conduct and words. The danger is when there is an implied agreement and the agent is crossing over into an undisclosed dual agency situation. Granted, agency must be in writing signed by all parties, but beware of letting another party believe you are representing them when you are not.

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

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

Ratification and Estoppel

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

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

Agency Relationship Definition

According to the Law of Agency the definition of "Agency Relationship" means:

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

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

Brokerage Services

When are you performing real estate brokerage services? This is the difference between a licensed broker and an unlicensed assistant.

Chapter 18.85 RCW is the Real Estate License Law. Brokerage Services is defined under RCW 18.85.011 (16)

"Real estate brokerage services" means 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, or by a licensee on the licensee's own behalf:

(a) Listing, selling, purchasing, exchanging, optioning, leasing, renting of real estate, or any real property interest therein; or any interest in a cooperative; or any interest in a floating home or a floating on water residence.

(b) Negotiating or offering to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate, or any real property interest therein; or any interest in a cooperative;

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

(d) Advertising or holding oneself out to the public by any solicitation or representation that one is engaged in real estate brokerage services;

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

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

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

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

Chapter 2

Who do You Represent and When?

Commencing an Agency Relationship

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

A firm must enter into a Brokerage Services agreement with the principal before, or as soon as reasonably practical after, its appointed broker commences rendering real estate brokerage services to, or on behalf of, the principal.

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

<i>Showing property to prospective buyers.</i>	<i>Discussing qualifying for a mortgage</i>
<i>Cold calling to neighbors about a new listing.</i>	<i>Working on a CMA for a prospective seller</i>
<i>Serving a cup of coffee to a prospective buyer.</i>	<i>Writing a prospective ad for a property.</i>
<i>Answering listing questions from an ad call.</i>	<i>Writing a purchase and sale agreement or lease.</i>
<i>Searching the MLS for properties for a buyer.</i>	<i>Sending out letters to homeowners about services.</i>
<i>Negotiating a lease for a tenant.</i>	<i>Marketing a property that is a FSBO.</i>
<i>Showing photos of listings on social media</i>	<i>Discussing market value of a home with a seller.</i>

There is no exact answer as to when an agent is providing brokerage services because their actions and words could imply far more than the small examples given. In the examples above, the agent could be performing brokerage services in all of the instances. Serving coffee is not an actions that would require a real estate license.

Who Do You Represent as an Agent?

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

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

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

Exceptions to the presumptions

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

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

1. The broker's firm as appointed the broker to represent the seller pursuant to a written brokerage services agreement between the firm and the seller. In that case, the broker is the seller's agent.
2. Broker's firm has appointed broker to represent the seller pursuant to a written brokerage services agreement between the firm and the seller, and the **broker's firm has also appointed the broker to represent the buyer pursuant to a written brokerage services agreement between the firm and the buyer**, in which case the appointed broker is a Limited Dual Agent .
3. The broker is the seller or one of the sellers; or.

Know who you represent at all times. Make sure it is disclosed to all parties.

Signing the Brokerage Services Agreement

A written Brokerage Services Agreement with a client:

- Discloses the agency relationship with the client in writing.
- Affirms that the agent has given the buyer a copy of the Pamphlet on the Law of Agency.
- Gives the buyer written consent for limited dual agency.
- Details terms of compensation.
- Can protect agent commission if client purchases with another agent.
- Puts commission in writing.

A firm must enter into a brokerage services agreement with a principal before, or as soon as reasonably practical after, its appointed broker commences rendering real estate brokerage services to, or on behalf of, the principal.

This includes services agreements with sellers, buyers, landlords, and tenants. Brokers must have written brokerage services agreements signed by their clients right away. In the past, real estate brokers would work with buyers, for example, by prequalifying them and showing properties, but they had no agreement. They were often left without any loyalty and even payment of commission.

A Brokerage Services Agreement must include the following:

1. The term of the agreement must be specified. If the client is a buyer there is a default term of 60 days with the option of a longer term.
There is a new law as of May 2023 that limits listing agreements to a term of 5 years. It is called the "Consumer Right to List" bill. There have been companies having consumers sign agreements to list exclusively with them for up to 40 years or there is a substantial penalty and a cloud on title.
2. Specifies that the broker is appointed as an agent for the principal, and
3. Whether the agency relationship is exclusive or nonexclusive. If the principal is a buyer, checkbox options for the buyer to select either an exclusive or nonexclusive relationship;
4. Whether the principal consents to the broker appointed as an agent for the principal to act as a limited dual agent. This consent must be separately initialed by the principal. It must include an acknowledgment from the principal that a limited dual agent may not

advocate terms favorable to one principal to the detriment of the other principal. It is limited by the duties of a Limited Dual Agent under additional duties in RCW 18.86.060; and

5. Whether the principal consents to the firm's designated broker and any managing broker responsible for the supervision of the broker appointed as an agent for the principal to act as a limited dual agent in a transaction in which different brokers affiliated with the same firm represent different parties.

A Brokerage Services Agreement is NOT required when a broker performs real estate brokerage services as a buyer's agent solely for commercial real estate.

Transaction Specific Representation

What if you are the seller's agent on a listing. The buyer is impressed by your work ethic and experience. The buyer wants you to represent them to purchase a house. The Law of Agency addresses this issue and others that may arise.

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

Agency Confusion

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

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

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

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

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

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

Terminating an Agency Relationship

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

1. Completion of Performance

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

2. Expiration of the Term

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

3. Termination by Mutual Agreement

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

4. Notice from one party to another

There are times that the principal OR the agent do not want to continue the relationship. When working under a listing agreement, there is a term agreed upon. If one of the parties chooses to terminate the agency relationship and the agreement, there may be contractual issues that may have to be resolved. For example, the seller may be liable for damages or costs incurred by the listing broker should the seller choose to unilaterally revoke the agreement.

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

5. Operation of Law

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

Duties that survive agency

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

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

Duties of a Licensee

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

General Duties of a Licensee

“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:”

1. “To exercise reasonable care and skill.”

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

2. “To deal honestly and in good faith.”

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

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

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

In one case the issue was whether the broker was required to provide written communication to the sellers from another broker even though it was not part of the agent’s brokerage services. The other broker inquired about a possible rental instead of a sale. The brokerage agreement was for a sale.

4. “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 the licensee has not agreed to investigate.”

Note the definition of material facts in the Law of Agency.

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

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

6. “To provide a pamphlet on the law of real estate agency to all parties to whom the licensee renders real estate brokerage services or any party not represented by a broker in a transaction before the party signs an offer or as soon as reasonably practicable.

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

7. “To disclose in writing before the broker’s principal signs an offer, or as soon as reasonably practical, but before the parties reach mutual agreement.

Whether the broker represents the buyer’s agent, the seller as the seller’s agent, or both parties as a limited dual agent.

The disclosure shall be set forth in a separate paragraph titled ‘Agency Disclosure’ in the agreement between the buyer and seller or in a separate writing titled ‘Agency Disclosure.’”

It must include any terms of compensation offered by a party or a real estate firm to a real estate form representing another party.

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

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

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

Confidential Information

The Law of Agency defines confidential information as:

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

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

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

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

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

What are examples of confidential information for the seller?

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

What are examples of confidential information for the buyer?

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

If there are questions about confidentiality, contact your designated broker.

Material Facts

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

A material fact is information which:

1. Substantially and adversely affects the value of the property.
2. Substantially adversely affects a party's ability to perform its obligations in a real estate transaction.
3. Operates to materially impair or defeat the purpose of the transaction.

If the information would affect the buyer's decision to buy, or how much they would pay, then it must be disclosed to the buyer. The same goes for the seller. Disclosure of information that would affect a seller's decision, must be disclosed.

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

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

Unless otherwise agreed, a broker 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 broker to be reliable.

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

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

If a seller wants to keep something secret from the buyer and the buyer subsequently finds out the secret, then a lawsuit could follow. The decision to keep a negative stigma secret should not be made by an agent or encouraged by an agent.

Your license or laws cannot shield you from litigation. People can still sue you and the other party.

Duties of a Seller's and Buyer's Agent

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

Duties of a Seller's Agent

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

Duties of a Buyer's Agent

- A. To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction.
- B. To timely disclose to the buyer any conflicts of interest.
- C. To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise.
- D. Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship.
- E. Unless otherwise agreed in writing after the buyer's agent has complied with section 3(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that buyer's agent shall not be obligated to seek additional properties to purchase while the buyer is subject to an existing contract to purchase.
- F. A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer or create a conflict of interest.
- G. the representation of more than one buyer by different brokers affiliated with the same firm in competing transactions involving the same property does not in itself breach the duty of loyalty to the buyer or create a conflict of interest.

Agency questions

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

You are presumed to be a buyers agent (unless you meet one of the exceptions.) As a 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. You must have them sign a Brokerage Services agreement as soon as reasonably practicable.

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

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

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

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

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

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

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

Duties of a Limited Dual Agent

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

"A licensee may act as a limited dual agent only with written consent of both parties to the transaction set forth in the Brokerage Services Agreement.

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.

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. If the agent acts as a buyer's agent and is only going to represent the seller, the agent could have created an undisclosed dual agency situation. Undisclosed dual agency is unlawful.

Compensation

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

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

According to the Law of Agency regarding compensation:

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

Note, that the commission is always paid to a broker according to license law. Commission cannot be paid to an unlicensed person.

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

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

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

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

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

4. “A buyer may agree that a buyer’s agent may share with another broker the compensation paid by the buyer.”

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

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

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

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

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

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

The terms of compensation, including the amount the principal agrees to compensate the firm, the principals consent and any terms of consent to compensation sharing between firms, the principal’s consent, if any, and any terms of such consent to compensation of the firm by more than one party

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

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

9. A firm may receive compensation without a services agreement for the provision of a broker’s price opinion as defined in RCW 18.85.011, or a referral by one firm to another firm if the referring firm provided no real estate brokerage services in the transaction.

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

Limiting Brokers Liability

Fiduciary vs Statutory Duties

The Law of Agency states that brokers will only have statutory duties and not fiduciary duties in dealing with their clients. This eliminates any confusion.

A number of duties concerning the relationship of an agent to the principal; buyer or seller, landlord or tenant, are set forth in statute. These statutory duties specifically superseded the common law rules applied to real estate licensees to the extent that they are inconsistent. Statutory duties allow brokers, consumers, and the courts to clearly understand an agent's role and responsibilities by listing them in the context of the Agency Law.

Fiduciary duties of loyalty, confidence and trust are often hard to define so the laws more specifically identify the role and duties and agent has regarding their clients.

Elimination of Vicarious Liability

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

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

1. "A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:
 - a. Unless the principal participated in or authorized the act, error, or omission; or
 - b Except to the extent that:
 - i. The principal benefited from the act, error, or omission; and
 - ii. The Court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.

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

Elimination of Imputed Knowledge

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

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

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

Interpretation

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

Enforcement

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

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

Review

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

It is important to know that there are no lawsuits currently in Washington State that have tested this law courts have interpreted this law.

This Law of Agency has been interpreted many different ways by attorneys, brokers, and the Dept. of Licensing. There are many unanswered questions regarding the interpretation of the law and what certain provisions mean in practice. Natalie Danielson is not an attorney, so if there are any questions regarding agency, ASK!

Remember
Contact your broker and/or corporate attorney
if there are any questions you may have
regarding this class or
the Law of Agency.

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; and
- (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.

You must complete the Quizzes and the final in the Advanced Practices Workbook