

# Why Should a Buyer Hire You...

When they can find a property on the internet themselves?

by Natalie Danielson

A buyer of real estate can just look up properties that are for sale or sellers that might be prospects. Why should they compensate a buyer's agent to write up the sale of property? This will be the hot question for years to come and could affect your business. Know the issues surrounding the law requiring the buyer brokerage agreements.



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## Clockhours by Mail

1. You will be provided with a booklet of with the class material here in a pdf format. It is a **THREE CLOCKHOUR CLASS FOR \$30.00 TUITION.**
2. The course has been divided up into sections. In Washington State a “clock hour” is 50 minutes. There are questions about each section. They can be answered while reading the material, at the end of the session, or at the end.
3. **Answer** the questions on the quiz sheet.
4. If you have any questions regarding the material or the questions, don’t hesitate to email Natalie Danielson.
5. **Email** Scan the Quiz and Evaluation and email back to Professional Direction. You can pay on the front of the website! It is the most secure way to Pay.
6. The certificate will be mailed or scanned within 1 day (**or with HOURS!**) of receipt of course materials and handout. If you are desperate... just email us!!!!

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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## Why Should a Buyer Hire You

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### Curriculum

<b>Session Hours</b>	<b>Major Topics</b>	<b>Method of Presentation</b> Lecture, Discussion Read, Take quiz
1 15	Agency History and Anti trust regulations	
2 15	NWMLS Changes rules	
3 15	How does this affect brokers	
4 15	What do the consumers think?	
5 15	How has the real estate industry responded?	
6 15	Buyer Brokerage Agreements	
7 15	Thought Provoking Questions	
8 30	Your Value Proposition	
9 30	Discussing this issue with sellers and buyers	
10 15 min	Moving forward with changes in the future	

# Why Should a Buyer Hire You?

**When they can find a property on the internet themselves?**

In the past, the real estate industry had a firm grasp of all the properties for sale in an MLS. A consumer had to work with an agent to get access and information on properties. Today, property listings are all over the internet! They are on real estate firm websites along with third party sites as large as Zillow and as small as a neighborhood. One listing can be found in multiple places online. The detailed listing and address along with even qualifying information is published for the consumer. The consumer can search county records online for more information.

Sellers typically list their property with a firm for a fee. The listing firm then often shares a percentage of that commission with the broker that brings the buyer. The amount of commission the seller pays is not disclosed to the consumers. Most consumers have very limited knowledge about what happens to close a real estate transaction. They also do not understand the costs and the fees.

In an attempt to bring more transparency to the transaction, the Northwest MLS has passed rules that make the Selling Office Commission (SOC) able to be published by the listing office for disclosure to the prospective buyers. The listing commission payable to the firm is still not published.

This puts the buyer's agent in a position to negotiate their compensation if the commission published does not cover their time, effort, fees and responsibilities. A prospective real estate buyer and many sellers often don't understand the responsibilities and work involved to get a transaction closed. And, often the real estate agents do not realize the importance and worth of their own time and energy.

These changes will require that buyers be clear with sellers on the compensation. Brokers and buyers will also have to have a written Agency Agreement with buyers to detail the information about compensation especially if they will have to negotiate commission.

There are more changes ahead for the real estate industry. It is imperative that real estate brokers be aware of changes and how they may affect them now and in the future.

## **Course Objectives**

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

- Understand the history of Agency in WA and the National issues including lawsuit
- Know the importance having a buyer brokerage agreement signed.
- Know the importance of disclosing agency limited and dual agency.
- Know the reasons that you are worth the compensation as a buyer's agent.
- Identify how the changes affect business today and what changes are ahead.

# Why Should a Buyer Hire You?

...When they can find a property on the internet themselves?

## Do you want to Wear an Orange Jumpsuit?

This class is about the history of agency law, the current laws, the NWMLS rules. It covers the importance of a Brokerage Services Agreement and the disclosure of the payment of commissions. It deals with issues relating to talking and disclosing to consumers.

There is no discussion of an “average,” “typical,” or “current” commission rate that the brokers in the state are charging. News reports often cite average commissions and use certain commission amounts in the reporting. They suggest lower and discount commissions. Some real estate firms advertise some of their commission rates and rebates. Since the commission is negotiated with clients, there is no “discount.”

Real estate firms can decide the commission that they will charge clients. Many firms leave the decision about the amount of commission up to the individual brokers. The seller and the buyer have the right to negotiate the commission amount that they want to pay. There is no standard commission rate. The MLS and REALTORS do not suggest or decide commission rates.

The NWMLS rules allow the real estate firms to publish to the consumer the amount of commission that the seller is willing to pay the buyer’s broker. This may mean that buyer’s brokers may be faced with negotiating a compensation during the transaction if that amount in the listing is not acceptable for them or their firm.

It is a violation of Federal Sherman Antitrust laws if real estate firms or brokers attempt to collude or conspire to set commissions. No broker should be discussing commissions with other brokers in competing firms or in classes. Again, no discussion of commission rates. Any percentage is just used for an example in class and not an attempt to discuss “typical” commission rates.

# Let's Look at Agency Law History

## Why is Commission in the News?

Consumers are asking questions about the compensation paid to real estate brokers across the country. The real estate industry is changing and will see more change in the future. As we look at other service and brokerage type businesses like travel agencies and stockbrokerages, the internet has drastically changed the industries. The real estate industry has fought change kicking and screaming. In 2019, a class action lawsuit was filed that could affect the real estate industry.

## The Basics of the MLS and Compensation

Most real estate sales are listed on a regional multiple listing service (MLS). This gives real estate brokers access to information on all the properties listed for sale. Brokers agreed to co-broke and let other competing brokers show, sell and be compensated. Most of the MLS's in the country are owned and operated by the Association of Realtors. Therefore, the real estate brokers were required to join the association in order to have access to the listings for sale.

In Washington State, the NWMLS is independently owned by the broker owners. They pay the fees and sit on the board. The REALTOR association has no ownership, management or oversight for the NWMLS.

In the last century, the sellers listed the property and agreed to pay commission to the listing agent. This commission is negotiable and not set by any Realtor office or MLS. It was often between 3-7% of the sales price. The broker that brought the buyer and the offer represented the seller and was compensated at closing with a 40-60% percentage of the commission. In the past, the broker that brought the buyer was paid by and represented the seller in the transactions as a sub-agent. The buyer broker did not represent the buyer.

## But who is representing who?

In 1993 Edina Realty, a large brokerage in Minnesota, was sued over a question of representation and undisclosed dual agency. The listing agent represented the seller and the buyer's agent represented the buyer. The class action lawsuit resulted in judgements of millions of dollars. And, most importantly, it caused a title wave across the country to create agency disclosure agreements between firms, brokers and clients.

## Washington State passes Law of Agency

Effective January 1, 1997, the Law of Real Estate Agency defined our role by statute in Washington State. The legislation defines agency for real estate brokers in our state for the first time. There were changes in 2013 including changing the term "licensee" to "Broker" to coincide with the 2010 license law changes.

This law changed the way we worked with consumers. Real estate brokers working with buyers were automatically “presumed” to represent the buyer with exceptions. They negotiated offers with sellers representing the buyer and the listing agent representing the seller. The new law made it absolutely clear that the payment of commission does not create an agency relationship! The seller continued to pay the entire commission even to buyer’s agents that didn’t represent them. BUT, the commission was wrapped into the price of the house, so in theory, the buyer paid for the commission. It was a part of the sale.

The basic objectives of the Agency law according to the Department of Licensing are to:

- Clarify the Law of Agency as applied to real estate brokers. The law created statutory duties instead of the common law assumptions. The duties of a real estate representing the seller (landlord), the buyer (tenant) and dual agent are spelled out in the LAW. The chapter supersedes all, not just inconsistent, common law fiduciary duties owed by a principal to an agent. So an agent’s duties are in writing.
- Create presumptions of agency relationships with customers consistent with their natural expectations, while retaining some flexibility for alternate relationships. In the past we were presumed to represent the seller, but the buyers assumed that agents represented them when writing up a transaction. So, the presumption has flipped over to representing buyers. When working with a buyer, you are presumed to represent that buyer “unless.” There are 5 exceptions.
  1. The licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller’s agent;
  2. The licensee has entered into a subagency agreement with the seller’s agent, in which case the licensee is a seller’s agent;
  3. 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 . (bold type was a change made in 2013) Buyer’s brokers should be using the Buyer Agency Agreement!
  4. The licensee is the seller or one of the sellers; or.
  5. The parties otherwise in writing after the licensee has complied with section 3(1) (f) of the act.” (given a copy of the pamphlet)
- Reduce instances of dual agency. Disclosure and discussion can help reduce unintended dual agency.

## **REALTOR Association Fought Bill on Dual Agency in 2019**

The Washington State REALTOR association won a battle over dual agency that would have affected commercial transactions and ultimately would have had an impact on residential transactions as reported in the REALTOR Magazine in June 2019. The bill did not even make it to a vote in the Washington State Legislature. The bill sought to limit in-house transactions.

Dual agency has become a hot-button topic in real estate over the last few years. Critics argue there’s a direct conflict of interest whenever a brokerage represents both a buyer and seller, while supporters say the practice connects buyers and sellers faster and eliminates much of the time-consuming aspects of a transactions. This is not the end of an attempt to change legislation relating to dual agency. But, at this time, there are no changes.

## **Class Action Lawsuit in 2019 Largest in History**

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. The lawsuit originates with a seller, Christopher Moehrl in Edina Minnesota who questions the compensation paid to real estate brokers, in particular the buyer's broker.

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

- 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.



In the class action lawsuit, it 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

## **National Association of REALTORS (NAR) Responds to their Members**

The general counsel for NAR calls the lawsuit "baseless." According to NAR the question is, "Who really has the best interests of the consumers in mind? It is the attorneys for the plaintiffs or the REALTORS who help people navigate the most significant purchase/sale they'll ever make?" NAR published an article in the September-October 2019 magazine with an outline of their response. The brief article lists 4 reasons the MLS promotes a procompetitive market for real estate. The lawsuit has grown and the original one joined another lawsuit in August.

Here is an outline of the 4 reasons.

1. REALTORS are champions of homeownership, property rights and the communities they serve. They adhere to a strict code of ethics.
2. The MLS system and the way commissions are paid create competitive, efficient markets that benefit home buyers, sellers and small business. commission structure ensures greater access for a large community of home buyers who might otherwise be priced out of the market.
3. Local expert brokers play a crucial role in helping buyers and sellers achieve their goals.
4. These lawsuits are wrong on the facts, wrong on the economics and wrong on the law. Commissions are negotiable and can be negotiated at any point during the transactions.

## **The Department of Justice Opens Investigation**

The Department of Justice has opened it's own investigation in 2019 into real estate sales apart from the lawsuits. They have demanded information from CoreLogic, which is a platform for most of the MLS's in the country.

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.

## **Class Action Lawsuit Settlements**

Remax and Anywhere (Realogy Holdings) Real estate in Sept 2023 agreed to settlements in the Moehrl and Sitzer/Burnett class actions suits. They each agreed to pay millions of dollars to resolve all claims against them. Anywhere is the parent company of Coldwell Banker, Century 21, Sothebys and Corcoran. They all agreed to change their business practices. The proposed settlements still require court approval.

The National Association of REALTORS has said it plans to continue arguing its case. They say that the practice of the listing broker paying the buyer broker's compensations saves seller time and money. The lawsuits claim that NAR rules violate antitrust laws and inflate the fees paid to buyers agent.

# Northwest MLS Changes Compensation Disclosure Rules

In response to the class action lawsuit against the National Association of REALTORS, the Northwest Multiple Listing Service (NWMLS), has changed rules that could have a dramatic impact on the real estate industry in the Puget Sound Region. NWMLS is the largest MLS in Washington State but it is not the only MLS. NOTE: The NWMLS It is NOT managed or affiliated with the National Association of REALTORS or the Washington Association of REALTORS.

This is the information released in the summer of 2019.

## ***Three Changes to Real Estate Commission Disclosure***

*The Northwest MLS has voted to change the disclosure of commission to increase transparency and flexibility for the consumers. The changes will take effect in October 2019.*

### ***1. Publishing the Selling Office Commission***

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

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

### ***2. Seller not required to Offer Commission to Buyer's Broker***

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

*According to the Washington State Law of Agency RCW 18.86 : Brokers are not required to show properties as to which there is no written agreement to pay compensation to the buyer's agent.*

*The NWMLS will change the forms to alert sellers that the buyer's brokers are not required to show property for which there is no written agreement to pay compensation to the buyer's broker. This is just a notice as it has been in the Law of Agency for decades.*

### **3. Buyers' Broker can Negotiate Commission with Seller**

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

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

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

### **Selling Firm Commission Addendum**

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

- 1. If there is no offer of compensation in the listing, the form will allow the buyer and the buyer's broker the opportunity to negotiate for compensation for the buyer's broker to be paid by the seller:*
- 2. Consistent with the current Rule 104(d), the form will allow the buyer and buyer's broker the opportunity to negotiate for additional compensation from the seller, where the SOC is less than the buyer's obligations to the buyer's broker in a Buyer Representation Agreement; and*
- 3. If the property is not listed (i.e. a For Sale by Owner (FSBO), the form will allow the buyer and the buyer's broker the opportunity to negotiate for compensation for the buyer's broker to be paid by the seller.*

### **Buyer Representation Agreements**

*The rule revisions may increase the use of buyer representation agreements (Form 41A Buyer Agency Agreement) Many buyer's brokers are not using the forms. The seller has an agency agreement within the context of the listing agreement. The seller has always been able to determine the level of compensation they want to offer a buyer firm.*

*The Buyer Agency Agreements have been in use for many years, but most brokers have been avoiding them. Form 41(a) gives the consumer the option to have an exclusive Agency Agreement or not with a real estate broker. Brokers, the NWMLS and the Dept of Licensing have encouraged buyers' broker to use the form. (As of January 2024 the Buyers brokerage agreement is required by law.)*

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

### **The Future and Implementation of the new NWMLS Rules**

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

There are many factors involved including timing. The rules went into effect in October 2019. Some brokers wave them off as just a reaction to the lawsuit. Others think that the way real estate compensation is negotiated will throw the industry on its head. Only time will tell.

# How does this affect Brokers in NWMLS?

As the NWMLS rule changes have gone into effect in 2019, everyone is speculating how will it affect the real estate firms, brokers, and consumers. There is no question that there will be changes that affect everyone in the industry.

The Seattle Times newspaper led with this headline the day the changes went into effect. It is subscription based so you might not get the link.

**“Buying a home in Seattle may get thousands of dollars cheaper after the rule change by agents this week.”**

<https://www.seattletimes.com/business/real-estate/rule-change-by-agents-could-trim-many-thousands-from-cost-of-buying-a-seattle-area-home/>

Most real estate agents and their customers have read or heard about the article. What are your first thoughts?

The assumption in the article is that the cost of a Buyer Broker commissions would be borne by the buyer in a competitive market. Buyer brokers would be paid by their clients and would therefore have to compete with other brokers to offer buyers a lower commission. Overall, the commission is actually paid by the buyer in the price of the home.

The rule changes shake up the status quo. The goal is to have more transparency. The basis of the original lawsuit against NAR was because a home seller questioned why he was basically required by the MLS to offer compensation to the agent of the buyer and he felt that the amount of the commission was not reflected in the work a buyer's agent does.

This will affect brokers in the NWMLS because a discussion must take place with sellers and buyers about how a buyer's agent is compensated. The amount is now visible to the consumers. Agents working with buyers, are encouraged to have them sign a Buyer Agency Agreement. Though the agreement has been available for decades, agents have mostly steered away from the agreements thinking that it would scare the buyer away to go work with another agent without an agreement.

Though there are customers in the real estate business that don't see the value of having a buyer's agent, over 94% of all listings sell because of the listing in the MLS. The value of representation is not always felt by the consumers.

Real estate commissions are paid to the FIRM! In many articles and consumers' postings, this major element is not often disclosed. The real estate broker does not earn the entire commission. There are fees owed to the firm. In addition, there are other fees and costs that a broker must bear often before the transactions close.

# What do the consumers think?

If you were sitting with a group of potential home buyers and sellers, you might hear some of these comments.

- Agents get paid way too much for opening doors and filling out forms.
- I found every house I've bought online before the agent called about the new listings.
- I don't see value in working with a buyer's agent. I could negotiate a lower commission by going to the listing broker directly.
- When I see how much the buyer agent commission is, I can use that information to negotiate a lower price with the seller.
- Buyer's agents want me to offer the list price or more so the agent can make the most money.
- The commission that real estate brokers get is not "fair."
- I work hard for every dollar I am putting down on a house. I really deserve to keep every dollar I can in my pocket.
- I have bought and sold real estate before. I have knowledge and experience which will make the agents job easier, so I expect a discount on the commission
- I have no idea what the real estate firms and the brokers did to earn a total of \$80,000!
- All the companies conspire to keep the commissions as high as possible.
- Property values have gone up substantially so that the brokers commissions have followed. But the job has become easier!
- It doesn't cost more to write up a home that is \$300,00 vs one that is \$1.7 million. Why should agents make more money based on the price of the house?
- I want a rebate on the commission!

# How has the real estate industry responded?

Real estate firms, broker owners, industry association and the MLS have been having meetings all over Puget Sound discussing this issue. The REALTOR association nationally responded the lawsuit with a few paragraphs calling the lawsuit baseless and encourage brokers to continue to run their business as they always have.

Most real estate firms and broker owners are counting on and discussing that it will continue with “business as usual.”

## **Broker Managers/Owners say:**

“Few sellers will ever drop commission substantially.”

“When you take a listing under our company, we encourage you to charge our commission rates as we have done in the past.”

“Of course, after you explain the Buyer Agency Agreement, the buyer will understand and sign it.”

“FNMA and FHLMC along with FHA and VA will change their rules and let the buyer pay the commission as a closing cost.”

“Nothing will really change. Business will go on as it has.”

“There will always be some companies who will be like bottom feeders and be big discounters.”

“You get what you pay for.”

“Dual agency will just go away.”

“It is up to the real estate brokers to clearly sell their ‘value proposition’ when working with clients especially buyers.”

## **What others are saying.**

“Having a buyer pay more cash up front will reduce their resources for closing costs and down payment which will affect housing affordability.

“The buyers will not sign an agreement tying them to work with only one agent during a certain time frame.”

“This is good because commissions for the buyers are coming down.”

“Affordability for first time buyers will go down.”

“The major firms and REALTOR owned MLS’ have not reacted.”

“Eventually, Zillow will become an MLS.”

“I will just work with sellers and listings to ensure that I am paid.”

# Buyer Agency Agreements

## Changes ahead with state laws affecting Buyer Agency Agreements and the Law of Agency effective January 2024

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

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

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.

A written agreement with a buyer:

- Discloses the agency relationship with the buyer 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.

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

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

### Exclusive Agreement

This 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 boundaries.

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

## How to use a Buyer Brokerage Services Agreement?

Real estate brokers in Washington state seem to avoid using a Buyer Agency 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. This will require the use of the Buyer Agency Agreement.

A Buyer Agency Agreement has been available in Washington State for decades. It is not a new form, though it has recently been changed. In other states the Buyer Agency Agreement can be as long as 7 pages with terms similar to the WA state Law of Agency.

# Thought Provoking Questions.

Do you use a Buyer Agency Agreement? Are you ready to start using the forms?

Do you really believe that you are worth the commission? Do you have doubts as you tell the seller or the buyer that the commission owed is \$20,000 or \$30,000 or \$40,000? It is much easier when working with a buyer to just ignore it as we have done in the past? Do you feel defensive if a buyer (or seller) confronts you about commission?

When listing a property, the commission your firm typically charges has probably remained rather stable for many years. Commission is negotiable with the consumer, but a broker or a firm can decide what rates they want to charge a consumer. In many cases, the independent broker may have the option to charge any commission under the firm's policy. Do you just follow your firm's policy, or do you have options for compensation?

Have you had the discussion with customers about discounting the commission you usually charge? Have you fallen back on the statement "everybody is doing it?" This would be a violation of Antitrust as the brokers and firms in the industry do not set the commissions.

Do you think a buyer will agree to pay the difference in commission between what you want and the SOC? What are your concerns?

Some people are saying dual agency will become illegal. There was a bill to squash it but it didn't pass in WA state. Would you represent the buyer and the seller on a transaction? Would you be a dual agent if the buyer buys a house listed by another agent in your office. If there is a dispute, how will your broker negotiate?

The MLS is very powerful. The MLS has the only complete database of properties. No one ever heard of Zillow ten years ago. Now it is just as recognizable as Zillow. What do you think Zillow will do in the future?

## ***Group questions... work in Groups of 2-3 and discuss the question you are given***

### **That commission is way too high. The newspaper said it was coming down.**

You are sitting with a home seller ready to list his/her home for sale. You have agreed on a list price. As you pull out the listing agreement and start to chat about the commission, your sellers stop and say...

“We can see that at that percentage commission we would be spending \$63,000. That just seems way too high. We read in the Seattle Times that commissions are coming down.”

### **Why does it cost more for agent’s commission cause the house more?**

“Three years ago, I sold my house and moved here from the other side of the mountains for work and bought this house. Now I’m being transferred and have to sell my house. My house in Eastern WA sold for \$300,000. This house is worth double. The commission will be double. But the job to get my house hasn’t doubled. It doesn’t cost more to sell this house. “

### **“I don’t think I should pay your commission.”**

Prospective buyer sits down to talk about buying a new house. “When I bought this house two years ago, I was working with an agent. She would send me potential listings that match my criteria. But every listing she sent me I had checked out on my own on the internet before she sent me the listing. I found the house I wanted, and I made the appointment with her to preview it. I made it very clear what to offer. This was not my first house. I don’t see why I would be responsible for paying your commission of \$30,000 if the seller does not pay buyers commission.”

### **I don’t have extra cash to pay your commission**

First time buyer found the perfect house! “I went to a lender and I’m qualified for a loan and I have the down payment and the closing costs in the bank. I am cutting it very close. I called you to write up the sale. You want me to sign this Buyer Agency Agreement to agree to pay you the difference between the commission the seller agrees to pay and the \$15,000 you are accustomed to receiving? That’s crazy! I don’t have extra money. I can go right to the seller!”

### **I don’t need an agent so I will go to the listing agent.**

“I see online that the commission will be almost \$20,000. That is over half a down payment. I want to represent myself and get a credit for the \$20,000.”

### **I want a rebate**

“I saw an ad that said a buyer can get a rebate of the commission if they work with that other company. How do I get a rebate from you?”

### **What is everyone charging**

“According to news reports and other real estate agents, the commission rate is 6% (Seattle Times). When I list my house for sale, what would happen if I only pay the buyer’s agent ... 1.5%, 2%, or 2.5%? Will agents not show my house? Will that make such a difference?”

# Your Value Proposition

## Why Should a Buyer Hire you?

Surveys have shown that the consumer does not always see value in the compensation paid to real estate brokers. Most of the work that a broker does to earn compensation is not visible to the real estate consumer. Sometimes the most difficult aspects of the job take the shortest time. The time, energy, and education for a broker are hard to measure. Finding clients is difficult. A consumer might think that they want a discount broker who did the paperwork and didn't care about emotions or outcomes. But, if that was the case there wouldn't be the full service real estate firms.

When a broker starts working with a client, there is no guarantee that the time and energy spent will end with a transaction. A rough guess is that less than 50% of customers end up as clients at the end.

Telling a prospective customer how valuable you are to their ability to get a property they want for a good price is not that easy.

## Agency Representation

When a prospective real estate buyer hires a real estate broker, the most important responsibility for the broker is to represent the buyer in all aspects of the transaction as defined by the Law of Agency. That can include the basic general duties of a licensed real estate agent.

### General Duties of a Licensee

“Regardless of whether a broker is an agent, the broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may not be waived:”

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.*

4. “To disclose all exiting material facts known by the broker and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters the licensee has not agreed to investigate.”

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

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

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

6. "To provide a pamphlet on the Law of Agency in the form prescribed in section 13 of this act to all parties to whom the broker renders real estate brokerage services before the party;
1. Signs an agency agreement with the broker
  2. Signs an offer handled by the broker
  3. Consents to dual agency; or
  4. Waives any rights"

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

7. "To disclose in writing to all parties to whom the broker renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the broker represents the buyer, the seller, both or neither party. The disclosure shall be set forth in a separate paragraph entitled 'Agency Disclosure' in the agreement between the buyer and seller in a separate writing entitled 'Agency Disclosure.'"

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

*"Unless otherwise agreed, a broker 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 broker to be reliable."*

## **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 broker'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 (i) seek additional properties to purchase while the buyer is subject to an existing contract to purchase, or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.
- 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.

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*Does a buyer really understand what it mean to be represented by you as their agent?.*

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# Buyer's Agents write Binding Contracts

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*Hope is a universal factor with buyers and sellers of real estate.*

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Think about it.... HOPE! Everyone in the transaction is "hoping!"

They are hoping that the deal is signed.

They are hoping that the inspection goes fine.

They are hoping the bank financing gets approved.

They are hoping that the closing will happen.

The whole time during the sale everyone is .... hoping.

The requirements of a lender and a contract cannot be wished away. The problems on the home inspection need to be dealt with. The escrow and title have to be in line. Buyers and sellers, on their own, often assume too many things when they negotiate. Verbal agreements are not legally binding; however there is security in a valid contract. All real estate contracts must be in writing according to the Statute of Frauds.

Real estate agents have been trained in contract law issues. Real estate agents can only fill in preprinted contracts that were prepared by an **attorney**. A real estate professional is well versed in the terms and agreements in a contract. They are "held up to the standards of an attorney" when writing a real estate contract. **A real estate agent cannot fill out contracts for FSBOS unless they are part of the transaction or they could be dealing in the "unauthorized practice of law."** Don't fill out the contracts for your neighbor or a friend as a "favor."

In the past properties were sold with the most minimum of paperwork. Today, even in small towns throughout the state, forms that are over a decade old are still in use. But, the majority of transactions occur with at least a minimum of 25 pages of forms.

The forms can include, but are not limited to:

The purchase and sale agreement (approx 5 pages)	The finance addendum
The inspection addendum	The inspection addendum and responses
Contingency (if applicable)	FIRPTA
Property information disclosure form	Lead Paint Disclosure

Today, we have forms online that can be populated. Make sure you are careful to use a limited number of blank addendums (if any) because you could be practicing law by creating contracts. If there is anything that seems too complicated, don't hesitate to contact your Designated Broker.

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*Does a buyer think that since you are filling out preprinted forms, they can do that just as well as you?*

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## Negotiation can be Difficult Face to Face

Negotiating an agreement to sell a property is most effective with an experienced third party. Either the owner will indicate too much eagerness to sell or the buyer too much eagerness to buy. Putting the buyers and sellers together directly can put one in a less than desirable strategic position. It's like going to a foreign market dickering for the right price for a straw hat. Did you really get a good deal or did the seller turn around with glee at taking advantage of a tourist? Personality clashes are all too common between buyers and sellers.

Picture a buyer and a seller sitting across the table. The seller says, "I am selling my house for \$800,000." The buyer counters, "I'll offer you \$380,000." The seller says, "I want \$800,000." The buyer repeats, "I will offer you \$780,000." Ok.. who gives in?

If the seller sticks to his asking price, and the buyer sticks to her offer, the property will not sell. Someone... or both... have to give. It is the same for all negotiations. But, add

Emotion,

Tension

Unrealistic values

Time frames

Commission saving (there's only one commission)

... the negotiation gets more complicated.

Two sets of buyers and sellers that dislike each other can cause increased **friction** during negotiations.

Sometimes Sellers can give away **too much money** when negotiating with a prospective buyer.

If the agent represents only the seller, for example, then what kind of representation is the buyer actually receiving?

A real estate professional negotiates only on the basis of a signed contract and with the strictest **loyalty** to their client. If a buyer's agent has a written agreement with buyers, then the agent can represent them. Negotiation does not end at the time the offer is presented. Because of contingencies that can include inspection and financing, the buyer's agent must continue to work with both parties to put the transaction together and move toward closing.

A buyer working with a buyer's agent, could potentially save more money working with the agent than trying to save commission fees off the price.

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*Does a buyer understand that you are to negotiate in their best interest?*

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## Confidential Information is Protected by a Buyer's Agent

The buyers and sellers can actually create objections to the sale by saying too much! Isn't that true? Haven't you heard sellers start talking to buyers? Owners want to move for a variety of reasons and sometimes they simply no longer like the neighborhood for no specific or tangible reason that is a material fact affecting a buyer. Buyers might release financial information or strong desires to purchase the house giving away some negotiation power.

A buyer has his or her hand dealt in a card game close to their heart. It is not in their best interest to show the seller what cards they possess. The cards could reveal the motivation for purchasing the house, the financial situation and/or their flexibility. The buyer's might be celebrities who have had personal information released in the news that may or may not be accurate. These issues may have no impact on the ability to close on the house, but could give away too much information to lose some of their bargaining power. The buyer's agent owes responsibilities to the buyer including that of confidentiality. The buyer's may want to make a lower offer than what they are capable of paying.

The reason the seller is moving may not be critical information to the buyer. If the seller is in a financial bind or desperate situation, getting a divorce, or his health is failing, the seller has just as much right to get as much money for his property as a seller who is just moving to a larger home. In this case, the buyer does not need to know the reason for selling. The listing agent is the agent of the seller and owes certain responsibilities to them. The buyer could use that information to pressure the seller into taking a lower offer.

Under the Law of Agency, the buyer's agent owes the duty of confidentiality to the buyers. This extends to after the closing of the transaction.

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*Does a buyer really understand that you have an obligation to keep information confidential?*

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## Finding the Right Property

Real estate brokers are most often members of a Multiple Listing Association. There is usually no more effective way to market a property than through the multiple listing service. No organization or advertising program for any amount of money can accomplish what the multiple listing associations can do for sellers today. As a member of the multiple listing service the seller is hiring hundreds and maybe thousands of sales representatives for their property.

Each multiple is governed and managed differently, but the agents pay their share to belong. The Northwest Multiple Listing Association is **owned by the member brokers**. It is currently only available to member agents and real estate offices. It is the largest, but not the only, MLS in Washington State. Most of the MLS's in the country are owned and operated by the REALTOR associations. In our state, the Northwest MLS is member owned. In Spokane and Cark County the relationship with the REALTOR association is different because the association owns/ runs the MLS.

Real estate listing information from MLS' has been released to the consumer. The Northwest MLS (along with other MLS's) make the database available to the consumers on the Internet. The consumer has the ability to search for properties and location, as well as price. But, that information comes with a cost. That cost to update and maintain is borne by the member firms and brokers. Every member pays substantial dues to belong.

Because the consumer sees listing information all over the internet, they don't realize that most all of the listings originate from the local MLS paid for by the brokers. Having an accurate, up to date, central database of nearly all properties listed for sale is powerful for the industry and the consumer. With the information on listings now available to the consumers for free, they don't understand that the cost is borne by the brokers.

Almost every buyer at one time or another seeks the aid of a real estate professional, regardless of whether or not they plan to purchase from an owner directly. The MLS information, the one major data base is still in the hands and has the financial backing of the real estate agents and still is the most powerful marketing tool.

Currently, only properties listed by a real estate broker can be listed in the MLS. The power of that database is so difficult to explain to the sellers when they see all the websites flash in front of them on the web. Most people that search the web look for instant gratification... they stay on a site for less than a minute. But, the MLS in one location even on your company or personal website with an IDX feed, has far and away most of the properties available in the area it services.

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*The buyers need to understand that you are showing them all the potential properties.*

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# What is the Value of the Property

Real estate professionals must quote only the **listed price of the home**. A **"for sale by owner" seller might quote different prices** depending on his mood, the weather, or the personality of his prospect. It's hard to imagine when we are dealing with properties that have a listed price in the MLS, isn't it? The pressure to sell can work unfavorably when a seller cannot defend the asking price. Real estate professionals are trained to research the current market conditions and advise sellers and buyers as to the market value of property.

Value is an abstract word with many acceptable definitions. In a broad sense, value may be defined as the relationship between an object desired and a potential purchaser. It is the power of a good or service to command other goods or services in exchange. Value may not be the same as the cost. An item can cost \$50.00 but the value can be any amount higher or lower. For example, a \$50 set of used drumsticks can be worth \$50,000 if they were used by Ringo Starr or be worth only \$5 if they belonged to the kid down the block. Value can be affected by time, location, emotions, previous ownership, perceived or expected market changes, interest rates and cost of money. Value may be different than the price the item sells for. The owner may perceive a much higher value than the prospective buyer sees. Sometimes, the buyer can perceive a higher value than the owner.

Value is a concept that can be difficult to define. There are many factors that influence value and therefore prices. All of these can relate directly to the value of a piece of real estate. The value to a homeowner may vary from the price another buyer is willing to pay. For example, value is....

- Not always logical....a car can cost more than a house.
- Not always tied to function....a diamond can cost more than a computer.
- Not in our control.... bad movies cost as much as good ones.
- Not based on location...a view can be worth more than waterfront.
- Not always fair... waste management employees often can earn more than teachers.
- Not based on improvements... cologne up to a certain point is sensuous, but too much is nauseating.
- Not based on depreciation... a dull antique mirror can be worth more than a new clear one.

There are some consumers that think that the real estate brokers have an effect on setting the value and therefore the asking price of a listing. Consumers actually think, sometimes, that the broker is evaluating a house and suggesting a low price so that the broker will make money faster on a sale. There are buyers that think that the brokers want the buyers to pay more so that they will earn more commission.

The amount of commission seems large, but in the overall picture, the commission that actually ends up in the broker's bank account is much less than perceived. Any price dickering is not typically based on a broker wanting to pocket more commission.

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*Buyers need to know that you are negotiating so that you get the property at a fair price.*

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## Real Estate Brokers have Training and Experience

Real estate professionals are in an industry that is constantly and rapidly changing. In order to keep up with the demands and the industry knowledge, brokers are required to take continuing education in the real estate field. In Washington State, brokers have to take 30 clockhours of continuing education every two years. This includes a Core Curriculum on the latest legal issues.

It is difficult to keep up with all the laws and rules for a real estate agent active in the business every day.

Even agents are surprised at the changes that they face each month. Changes that can affect the consumer can include:

- Contracts and forms (The Statute of Frauds requires that contracts must be in writing)
- Disclosure (Property Information Disclosure form)
- Laws including Agency (Agents must disclose who they represent)
- Federal State and Local Anti Discrimination laws (affect the sellers and the buyers)
- Anti Trust legislation (Firms cannot agree to set commission rates)
- Marketing trends (Getting listings out on the internet.)

Consumers have no real access to the latest laws or trends. Consumers selling their homes as “For Sale by Owners” do not know their own rights. There are certain rights that all sellers have. But, also, every buyer has rights. There are also limitations for all the parties.

Real estate agents learn these laws and the rights of the consumers by taking required and elective education. It would take years for a consumer to get the amount of education a real estate agent gets in one year including classes, office meetings, and conferences, as well as, hands on education.

Consumers have a tendency to downplay the complexities of a real estate transaction. Though it might seem that a commission is large on a transaction that went smoothly, it may have only closed because of the knowledge and experience of the brokers.

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*Buyers do not understand the complexities of the real estate transaction.*

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# Property Condition and Disclosure

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

A buyer is encouraged on all transactions to hire a licensed home inspector to evaluate the property condition. The brokers have all worked with a number of inspectors and can often recommend several. The inspection is completed by an inspector that has no conflict of interest. It is contracted and paid for by the buyers of real property. A buyer's broker works with the buyer to evaluate whether it is necessary to negotiate to have certain items fixed or paid for. The inspection can often uncover issues that may have not been disclosed adequately by the Property Information Disclosure form.

The largest source of lawsuits against real estate brokers is in the area of misrepresentation. About 70% of all lawsuits are some form of misrepresentation.

Sellers are afraid to disclose information because they think it will make the property worth less to a buyer. But, they are not usually considering that the cost for a buyer to discover a hidden defect is far greater than the added value the seller may have received.

The Property Information Disclosure form is a law that pertains to all sellers of Washington State residential property. It is RCW 64.04 and is not a part of license law. It is between the sellers and the buyers. It affects even FSBO's. Not every material defect is listed on the form.

What does a seller have to disclose. Basically, the seller has to disclose:

- Anything that would affect a buyer's decision to buy, or
- Anything that would affect how much a buyer would pay for the property.

The only reason a seller does not disclose something that could be a problem... hides something.... Is because the seller

- Wants the buyer to buy without knowing
- Wants the buyer to pay top price for the property and not a discount because of the problem

The most important thing a seller can do besides price a property competitively is to DISCLOSE! A seller will not be sued for disclosing information! Sellers are sued for information that is NOT disclosed. The most important thing a buyer can do is to BEWARE, INSPECT AND TO QUESTION if there is anything that might create a red flag.

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*The inspection is a turning point in the transaction and need the agent to help evaluate their next move..*

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## Promote Housing for all free from Discrimination

Every person regardless of how they appear (their background, religion, sexual orientation, or almost anything inherent about them) should be able to purchase real estate without any kind of discrimination. Real estate brokers are bound under the federal, state and local laws to open those doors and treat all consumers equally. Real estate brokers must be knowledgeable of the laws that govern Fair Housing.

These laws, especially in Washington State, do not exempt the single family owner. It is important that these laws are not violated. Sellers cannot ask and real estate agents CANNOT answer questions about prospects if those questions have to do with a protected class.

Protected classes are NOT necessarily minorities! Everyone falls under these classes. The seller and the agent cannot show a LIMITATION, PREFERENCE, DISPARATE TREATMENT, or DISCRIMINATION toward anyone due to a protected class.

The seven protected classes in the federal statute include race, color, religion, sex, national origin, familiar status, and handicap. Washington State added Sexual Orientation as a protected class. Same sex marriage is legal in Washington State.

AIDS is a protected class under handicap.

Sexual orientation, marital status and political ideology are protected classes in Seattle.

Other state and local jurisdictions have other protected classes including political ideology, sexual orientation, military discharge, source of income, matriculation, personal appearance and Section 8.

There is no occupancy standard in the country. But if a seller or landlord when renting property limits the number of people so as to restrict families it could be violating the fair housing laws. A good rule of thumb could be 2 people per bedroom.

Real estate brokers help present offers without influence on the background of the buyers. In some cases, buyers and brokers want to write a letter to the seller to encourage their offer to be selected. Those letters in almost every case are selling the “buyer” over another buy based on a protected class. It could be as simple as the buyer being a quiet senior to a family. A broker representing the buyer would represent the buyer’s offer. The buyers are protected under the laws from being discriminated against. Sellers need to be reminded to choose the PAPER and not the PEOPLE when selling the property.

Having a broker represent a buyer means that they are there to protect the buyer’s right to buy free from discrimination!

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*Buyers and sellers rarely understand the anti-discrimination laws.*

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# How to Discuss Value with Consumers

## **Believe you are worth it!**

The first and most important part of negotiating compensation is to BELIEVE YOU ARE WORTH IT!

If you are sitting across the table from a potential client and he/she looks you in the eye and say, “Holy cow! You are going to charge me \$40,000 (any high number) for commission! That just seems outrageous. I’m having a hard time justifying that. I don’t want to pay that high of commission.”

You need to believe that the work that is being done to get that property sold is worth every penny that is charged. It is just like that when you buy anything.

Value is very hard to define. We are constantly spending money to buy things. We trade cash for a product. People have a tendency to save coupons or get a thrill if the cereal they buy in the store is \$1 off! The same people use their same piggy bank to buy a car and dicker with the dealer. Somehow, those are commodities with a price that can be compared to others of similar value.

There are economies that thrive on negotiation. When I travel to other places in the world, I am expected to negotiate with a vendor in a market. That vendor often has a strong sense of self. I can feel like he is saying, “take it or leave it.” He can appear so confident. He knows that I can afford the price he has placed on that trinket.

With services, it is harder to compare. Technically, all real estate firms and brokers do about the same job... or they are supposed to. But, because it is a personal service, their individual value can be much different than the next broker. It is very hard to quantify a single broker’s value. Often, the broker doesn’t always feel that they have the value they are encouraged to place on their own services!

*As an artist, I have to put a price on my work. Someone might question the price and ask how long it took to create that floral painting. It can seem like a personal question of value for me as an artist. But, I have to believe that I am worth what I am charging. My response could be, “It took me more than a decade and thousands of paintings before I created this masterpiece.”*

Yet, when brokers sit across the table from a prospective client, they sometimes don’t really think that the price they are charging for their services is worth the value. That is the most important voice to obliterate in your head.

Real estate brokers are paid for their services to sellers and buyers. In order to complete those services, they are required to have education, belong to a firm, and take the risk to find and close on clients.

Look at your own value proposition and believe that you are worth every penny that you charge your clients!

## **Just Simply say, “no.”**

One of my friends is a success coach. She networks with other people in the same industry. At one meeting, she took a gulp and asked another coach how much she charges. It was much more than she charges. That changed everything. She now charges much more than she used to charge, and she attracted more business! She believed she was valuable. If someone asks her to charge less, she just says, “no, this is what I charge.”

If you are asked to lower your price to less than what you think your value is, then you just say, “NO!” “No, that is not what I charge.” The fear associated with that answer can also go to whether you believe you are worth what you are charging. In addition, there is a fear that you will lose the client. What if your client walks and does not hire you? Then, you go get another client. There is no shortage of prospects. A client that doesn’t see your value from the start will not see your value at the end. That same client will be difficult in any negotiation situation.

## **Own the Services You Provide**

You have a service that you provide that is not something anyone can do. You are licensed and trained as a real estate broker. Left on their own, a potential buyer and a seller would have no idea how to put a transaction together. They can negotiate on their own and default to an attorney. The seller could be leaving money on the table, the buyer could be paying for a house full of problems, the seller could be selling too low, the buyer could be buying too high, the transaction is much more complex than what an attorney is aware of.

Don’t fall back on the “everybody’s doing it” excuse. That is not a reason for charging, let’s say, \$40,000. There are always people competing with you for business using different business models and compensation offers.

*The other day I looked up on the internet a company advertising with small signs on a street corner near my house. They were offering compensation to sell a house for an unbelievably low amount of compensation. I went to their website and it was misleading. They currently have no properties listed.*

If your company has not provided one, then create your own value proposition as a part of your presentation with sellers and buyers. Never promise more than you can give. Be clear about what you will do to represent the client.

## Facing Negotiation

When you are facing a negotiation regarding compensation.

Listen more than you speak.

Use the old “Feel, Felt, Found” approach.

I understand how you feel. I have felt that way before. (example) I’ve found (based on some other expert) that this is the best....

When speaking with a prospect that is more left brained like many men, avoid the “feeling” words.

I understand where you are coming from. I have been there before.(example) I’ve found based on my experience selling that...

*“I understand where you are coming from Mr/Mrs Seller. It is difficult when you are looking at your budget and your equity. I have been there before where I questioned whether... .... would be good. .... but, I have found that in order to get your house sold for the most money possible, we need to employ some aggressive marketing.”*

To the prospective buyer, you might say:

“I understand how you feel when you purchase your first house. It is a complex transaction and you are trying to get the best deal possible. I’ve been there also where I was counting the pennies and weighing where to negotiate to come out ahead. But, I’ve found that the best deal possible is when we work together to get you a great price on your perfect house.”

Discuss examples of how you might approach the compensation issues with your next client.



# Moving forward with changes in the Future

These changes are just the first ones that will drop like an ice cube in a cup of tea. They will change the temperature for the industry. It might happen quickly. It might not make a big difference in the way business is conducted. They are ice cubes in tea, nonetheless.

We can't help but look at the fact that Expedia changed the travel service industry. Amazon changed the way we shop for almost anything. Banks don't need bricks or knowledgeable employees at a desk. Service industries are changing. The real estate industry faced major changes when the listings became available to the consumers on the internet. Now, that they have the information, the consumers are questioning our value.

The real estate industry supports the largest lobbying group in the country. The wealth and profit from real estate sales is held in a very few people of the tens of thousands of people in real estate sales. Broker owners primarily have a business plan that continues to support a numbers game knowing that only about 80% of the brokers complete 20% of the sales. The rate of fall out and failure is one of the largest in the country behind life insurance sales. The consumer pays more for real estate services than any other service that they use.

It is time for agents to adapt to changes and run their business like a real business.

# Will a Buyer Hire You?

True / False answers on Quiz

1. *Expedia changed the travel industry by increasing customer service.* True / False
2. *The real estate industry is a customer service oriented business?* True / False
3. *The real estate agent job changed drastically when listings became public on the internet.* True / False
4. *Real estate brokers and their firms depend on a regional MLS as a database to access listings.* True / False
5. *The majority of the MLS's in the country are owned and run by the Association of REALTORS.* True / False
6. *The NWMLS is owned and managed by the brokers and firms in the areas it covers.* True / False
7. *In the last century, sellers listed properties with firms and agreed to pay commissions to the listing firm.* True / False
8. *The seller in the past traditionally agreed to pay compensation to the buyer's agent.* True / False
9. *The Law of Agency is a statute that covers the duties of real estate agency.* True / False
10. *The purpose of the Law of Agency was to clarify the real estate agency relationships.* True / False
11. *You are presumed to represent the buyer under the Law of Agency but it must be in writing.* True / False
12. *You are presumed to represent the buyer when they walk into a listing where you represent the seller.* True / False
13. *A class action lawsuit against the National Association of REALTORS is about a security breach.* True / False
14. *A seller in Minnesota was the root of class action lawsuits. He questioned the commission for the buyers firm.* True / False

15. *The class action lawsuit is filed against NAR and several major franchises and brokerages.* True / False
16. *NAR response to the lawsuit in the press and to it's members is that the lawsuit is "baseless."* True / False
17. *The NWMLS new rule allows brokers and firms to publish the Selling Office Commission.* True / False
18. *You are required by law to have a buyer sign a Buyer Brokerage Agreement effective January 2024.* True / False
19. *The listing commission paid by the seller is not published to the public.* True / False
20. *A seller listed with a firm is not required to offer a buyer's firm's commission.* True / False
21. *A buyer broker must have a Buyer Brokerage Agreement as soon as reasonably practicable.* True / False
22. *A real estate broker must show houses even if there is no offer for commission.* True / False
23. *It is a law that brokers are to use Brokerage Agreements when working with clients.* True / False
24. *The reason a seller does not want to disclose a material fact could be the buyer would not buy the property.* True / False
25. *The Brokerage Agreement affirms that the buyer has received the Pamphlet on the Law of Agency.* True / False
26. *A buyer that works with a Buyer's Agent is owed general duties including presenting all offers.* True / False
27. *A buyer's agent must not disclose confidential information about the buyer even after the sale closes.* True / False
28. *Buyers's agents have resources and referrals that can help a buyer's transaction.* True / False
29. *Discussion with other firms brokers about your commission is a violation of the Federal Anti-Trust Act.* True / False
30. *The most important thing a broker can do when discussing compensation is to believe that her/she is worth it!* True / False

*Please list the answers on the attached answer sheet! Thanks Natalie Danielson*



Answer sheet for Why Should a Buyer Hire You?  
Attach to Mandatory Evaluation.

1		16	
2		17	
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15		30	

I attest that I have read the materials and have answered the questions. I have included this with the mandatory evaluation.

**Date Course Started** \_\_\_\_\_ **Date Course Completed** \_\_\_\_\_

**Print Name** \_\_\_\_\_ **Company** \_\_\_\_\_

**Signature** \_\_\_\_\_

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# 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 (\$30 for 3 hrs) Pay on website. YES / NO  
 Did you fill out and sign this form? YES / NO

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

A "clock hour" is 50 minutes. This 3 hour class should take about 2 hrs 30 min. How long did it take you to complete the course? \_\_\_\_\_

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

What are 3 things that you learned from the course?

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

Why Should a Buyer Hire You?		
Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
	Email	
License Renewal Date		Date class taken

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

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