Advanced Washington Real Estate Law

by
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A Washington State Approved Real Estate School under R.C.W. 18.85.

Washington Real Estate Law

1. This is a 30 CLOCKHOUR CLASS called ADVANCED Washington Real Estate Law. It is required for all licensees to take to qualify for the Managing Brokers license exam. Any licensee can take it for the 30 clockhour renewal requirement, also. But, if used for renewal it is not also used for the managing brokers requirement. The curriculum is included.. There are objectives for each section.

2. You will be provided with a pdf booklet of with the class material. You are to read the material which is divided into 6 sessions.

3. This class **must be taken over a minimum of a 4 day period**. In Washington State a "clock hour" is 50 minutes plus 10 min break.

4. ***Answer*** the questions on the quiz sheet. There are questions for the exam at the end of each session. They can be answered while reading the material, at the end of the session, or at the end.

5. If you have any questions regarding the material or the questions, don't hesitate to call or email Natalie Danielson.

6. ***E-Mail*** Quizzes AND Exam and Mandatory Evaluation to Professional Direction.

7. The certificate will be mailed or emailed within often 24-48 hours of receipt of Quizzes, Exam and Evaluation

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

Thanks! *Natalie Danielson*

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ADVANCED
Washington Real Estate Law

Curriculum

Chapter 1
5 hours

Washington State License Law, Trust Accounting, Disciplinary Actions

Lecture
Discussion
Quiz/ action items

Identify the major provisions in the Real Estate License Law RCW 18.85
Be able to identify how firms are structured with firm licensing, Managing Brokers, Branch Managers and Brokers.
Know the responsibilities of Designated brokers, Managing Brokers, Branch Managers and Brokers.
Identify responsibilities that the designated broker can delegate to managing brokers.
Know fingerprint and background requirements, advertising guidelines, required records and termination procedures.
Understand the procedures for depositing client funds, receipting and recording funds held in trust.
Be able to list what the auditor evaluates during an audit and what a firm can do to be prepared.
Know the major provisions of the Uniform Regulation of Business and Professions Act RCW 18.235

Section 2
5 hours

Washington Law of Agency

Lecture
Discussion
Quiz/ action items

Define agency relationships under the Washington State Law of Agency RCW 18.86
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 5 exceptions to the presumption of buyer agency.
Define "client" relationships and when a prospect becomes a client.
Identify when the agency relationship commences and terminates.
Know when to disclose agency
Know when to provide a Brokerage Services Agreement and pamphet 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.

Section 3
5 Hours

Ownership Interest, Land Use, Property Management

Interest in Property

Know the difference between freehold and leasehold estates, encumbrance and license. Define encroachments, trespass, nuisance and CCR'S
Understand the ways to hold title, transfer of ownership and distressed property issues

Land Use

Know the growth management act and environmental laws affecting property and development

Property Management

Understand the property management and Landlord Tenant and Mobile/Manufactured Home Laws

Section 4 5 hours	**Contract Law** Know the definition of a contract Be aware of what constitutes a legal contract Understand terminating and modifying a contract Be able to know when a breach of contract occurs and the remedies Know offer and acceptance, multiple offers and fraud Know about listing agreements Property information disclosures Understand Purchase and Sales agreements including notices, contingencies, addendums and inspections	Lecture Discussion Quiz/ action items
Section 5 5 hours	**Anti-Discrimination, ADA, Tax issues** Know how the Federal, State and Local laws protect consumers from discrimination American Disabilities Act Tax issues Firpta Tax Deferred Exchanges	Lecture Discussion Quiz/ action items
Section 6 5 hours	**Employment law, Tax Issues, Trust Accounting, Financing and Closing, Anti-Trust, Fraud, Spam Act** Identify the different federal and state laws regarding employees and independent contractors Know tax laws pertaining to FIRPTA and Tax Deferred Exchanges Have an overview of trust accounting laws Be aware of fraud issues affecting real estate transactions Know the cam spam act	

Advanced

Washington Real Estate Law

Introduction

Of all the classes you can take in the real estate world of education, this one is the most important. It covers the laws that affect everything about real estate transactions, property ownership and leasing. This course, along with three years of real estate experience, is required to qualify to take the test to become a managing broker in the State of Washington.
Read the sections and work diligently on the quizzes to make sure you have a good handle on the information as the state test will cover this material.

Course Objectives

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

1. Identify how Real Estate License Laws and codes under regulate the business of real estate.
2. Identify the relationships under the Law of Agency
3. Know the laws surrounding ownership, distressed properties, land use and property management.
4. Know contract law and disclosure issues as they pertain to real estate transactions.
5. Know how anti-discrimination and ADA laws make housing available to all persons.
6. Know how employment law, financing, anti trust and fraud issues affect business.

Section 1
Washington License Law
Trust Accounting, Earnest Money and Audits
Disciplinary Actions

This chapter is an overview of the Washington State License Law and the responsibilities of brokers, managing brokers and designated brokers. Learn about the procedure for auditing a firm. Understand how the Uniform Regulation of Business and Regulations Act deals with disciplinary procedures.

Section 1

As a result of taking this chapter the real estate broker will be able to:

- Identify the major provisions in the Real Estate License Law 18.85
- Be able to identify how firms are structured with firm licensing, Managing Brokers, Branch Managers and Brokers.
- Know the responsibilities of Designated brokers, Managing Brokers, Branch Managers and Brokers.
- Identify responsibilities that the designated broker can delegate to managing brokers.
- Know fingerprint and background requirements, advertising guidelines, required records and termination procedures.
- Understand the procedures for depositing client funds, receipting and recording funds held in trust.
- Be able to list what the auditor evaluates during an audit and what a firm can do to be prepared.
- Know the major provisions of the Uniform Regulation of Business and Professions Act RCW 18.235 and the sanctions under the act.

Washington State License Law

In the simplest terms, license law requires that a person have a real estate license to sell or lease real property for another for a fee. License laws are created by each state. There are no federal real estate license laws. Who and what is required to obtain a license, experience and testing, disciplinary actions, and continuing education is included in the Washington State License Law RCW 18.85 and the Washington Administrative Code WAC 308-124.

It took 7 years and dozens of meetings, committees, emails, industry groups to finally pass the most widespread changes done to Real Estate License laws since they were written in 1925. Changes that became effective in July 2010 include categories of licensure, heightened supervision of new agents, more educational requirements, more detailed responsibilities, and detailed recordkeeping including digital records.

Structure of the Real Estate Firm

Firm Licensing

Under RCW 18.85.091 real estate firms have to be licensed. The minimum requirements for a firm to receive a license are that the firm:

1. The firm must designate a managing broker as the "designated broker" who has authority to act for the firm, and provides the director with the name of the owner or owners or any others with a controlling interest in the firm;
2. Assures that no person with controlling interest in the firm is the subject of a final departmental order suspending or revoking any type of real estate license; and
3. Does not adopt a name that is the same or similar to currently issued licenses or that implies the real estate firm is a nonprofit or research organization, or is a public bureau or group.

An applicant for a real estate firm's license shall provide the director with:

(a) The firm name and unified business identifier number;
(b) Washington business mailing and street address, contact telephone number, if any, and a mailing and physical address for either the firm's trust account or business records location, or both;
(c) Internet home page site and business email address, if any;
(d) Application fee prescribed by the director; and
(e) Any other information the director may require.

The firm has to have a unique name that cannot be the same or similar to currently issued licenses. The Department of Licensing can deny, suspend, and reject firm names or assumed names that are in their opinion derogatory, similar to other licensed firm names, implies it is a public agency or government, or non-profit or research organization or public bureau. A franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.
The firm must provide proof of the corporation, LLC or partnership. The firm and the Designated Broker are each required to pay license fees. The firm must operate under the firm name or an assumed name as licensed. All advertising must have the firm's name as licensed.

Designated Broker

A "Designated Broker" must hold a "Managing Broker's" license. A "Designated Broker" under RCS 18.85.011(10) means a natural person who owns a sole proprietorship real estate firm or who has a controlling interest in the firm who is designated by a legally recognized business entity (such as a corporation, LLC, or partnership real estate firm) to act as a "Designated Broker" on behalf of the firm. The Managing Broker's license must have an endorsement from the Department of Licensing as "Designated Broker."

The firm designates a Managing Broker as the "Designated Broker" who has authority to act for the firm. The Designated Broker for a firm must be registered to that firm and have an endorsement on their "Managing Broker's" license indicating the names of all firms for which they serve as the "Designated Broker." A "Designated Broker" may act as a "Designated Broker for more than one firm.

Designated Broker Responsibilities WAC 308.124C-125

The Designated Broker is responsible to:

- Assure brokerage service contracts or activities in which he/she participated follow the rules/laws of DOL
- Cooperate with the DOL in an investigation, audit or licensing matter
- Ensure accessibility of the firm's offices and records to the DOL
- Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance.
- Ensure policies or procedures are in place to account for safe handling of customer or client funds or property.
- Maintain up to date written assignments of delegation of Managing Brokers or Branch Manager Duties:
  - Delegating responsibility must be only to Managing Brokers licensed to the firm. Address in writing the duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and Managing Brokers.
  - Must also address the heightened supervision of brokers that are licensed for less than 2 years and the hiring, transferring, and releasing licensees to or from the firm.
- Maintain and implement written policies on:

  Referral of home inspectors in compliance so that there is a procedure for referring home inspectors to buyers or sellers addressing the consumers right to freely pick one and prevent any collusion between the inspector and the agent.
- Regarding the levels of supervision of all Brokers and Managing Brokers of the firm:

  Review with initials of all purchase or lease documents for agents licensed less than 2 years within 5 days of mutual acceptance.
  - Ensure all persons in the firm are appropriately licensed
  - Ensure all licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
  - Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and related rules
  - Be responsible for ultimate oversight of the firm.

Managing Broker

A "Managing Broker" means a natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of the "Designated Broker" and who may supervise other brokers or managing brokers licensed to the firm.

"Managing Brokers" the minimum requirements are:

- Must be 18 years of age or older
- A high school diploma or equivalent
- A minimum of 3 years of licensed experience as a full time real estate Broker in Washington (or another jurisdiction having comparable requirements) within the past 5 years. Or show practical experience in a business allied related to real estate as prescribed by RCW 18.85.
- Complete 90 hours in continuing education that must include the required classes of Advanced Real Estate Law, Brokerage Management and Business Management.
- Has passed the Managing Broker's license examination

Managing Broker Responsibilities WAC 308.124C-135

The Managing Broker is responsible to:

- Assure all real estate brokerage services he/she participated in are in accordance with the license laws and rules.
- Cooperate with the DOL in an investigation, audit or licensing matter
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Keep the DOL informed of his or her address
- If ***delegated*** by the Designated the Managing Broker is to:
    - Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance and policies or procedures are in place to account for safe handling of customer or client funds or property.
    - Keep accurate records, , review of contracts, modify or terminate brokerage service contracts for the firm,
    - Ensure proper and legal advertising by brokers working under the Managing Broker
    - Ensure all persons representing the firm under the Managing Broker has delegated authority to supervise are appropriately licensed,
    - Ensure licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
    - Follow and implement the Designated Brokers written policy on Referral of home inspectors.
    - Address levels of supervision of all licensees which includes review of new brokers under 2 years of licensure.

Any delegation of responsibilities must be in writing signed by both the Managing broker and the Designated Broker.

Examples of Department of Licensing Disciplinary Action

Finding: Failed to adequately supervise a salesperson under his employment regarding notifying us of their indictment and conviction.
Action: Broker's license suspended for 1 year (stayed for 3 years), and fined $2,500.

Finding: Failed to supervise the activities of a salesperson.
Action: Broker's license suspended for 1 year (stayed for 3 years).

Real Estate Broker

A “Broker” is licensed to one firm and must be supervised by a “Designated Broker” or “Managing Broker.”

To qualify for a broker’s license, a person must:

- Be at least 18 years old.
- Have a high school diploma or equivalent.
- Successfully complete 90 hours of approved real estate education within 2 years before applying for the exam. This education must include:
    - A 60-hour course in Real Estate Fundamentals.
    - A 30-hour course in Real Estate Practices.
- Pass the broker’s exam.

Once licensed a broker must have a heightened level of supervision. A Designated Broker or a Managing Broker who was delegated the responsibility in writing must oversee the new agent for the first two years. This includes reviewing all contracts within 5 days of acceptance.

Broker Responsibilities WAC 308.124C-140

Brokers are responsible to:

- Assure all real estate brokerage services he/she participated in are in accordance with the license laws and rules.
- Cooperate with the DOL in an investigation, audit or licensing matter
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Keep the DOL informed of his or her address
- Follow the written policy of home inspectors. Your Designated Broker should have a written policy.
- Be appropriately licensed including keeping your license current with required education and background/fingerprint check.
- Follow laws and rules regarding:
    - Safe handling of customer/client funds or property
    - Timely delivery of transactions documents and client funds/property
    - Proper and legal advertising
    - Modifying or terminating brokerage service contracts on behalf of the firm

Branch Manager

A “Designated Broker” may establish one or more branch offices under the same name as the real estate firm.

Each Branch office:

- Will be licensed.
- Pay a fee.
- Have a duplicate license showing the location of the real estate firm and the particular branch.
- Prominently display each duplicate license in the office.
- Have a Designated Broker authorize a Branch Manager to perform the duties.
- Have a Branch Manager” who has a Managing Brokers license.

A branch office license shall not be required where real estate sales activity is conducted on and limited to a particular subdivision or tract within 35 miles of the licensed office or branch office.

Branch Manager Responsibilities WAC 308.124C-130

The Branch Manager if delegated in writing and signed by the Managing Broker and the Designated Broker is responsible for:

- All Brokerage service contracts or activities in which he/she participated
- Cooperate with the DOL in an investigation, audit or licensing matter
- Ensure accessibility of the firm’s offices and records to the DOL
- Be knowledgeable of the License law, Law of Agency, and the Uniform Regulation of Business and Professions Acts and the related rules
- Follow the written policy of the Designated Broker on referral of home inspectors.
- Ensure all persons at the branch location are appropriately licensed
- Oversee the branch licensees, employees and contractors.
- Ensure all licensees submit transaction documents to the Designated Broker or Delegated Managing Broker in a timely fashion.
- Hiring, transferring, and releasing licensees to or from the branch
- All activity with the branch including supervision of all broker and Managing Brokers and heightened supervision of Brokers licensed less than 2 years.

If delegated by the Designated Broker, the Branch manager is to:

- Ensure monthly reconciliation of trust account records, trial balances are complete, accurate and up-to-date, and the accounts are in balance and policies or procedures are in place to account for safe handling of customer or client funds or property.

- Keep accurate records, proper and legal advertising, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, following and implementing the Designated Brokers written policy on Referral of home inspectors and addressing levels of supervision of all licensees including review of new brokers less than 2 years of licensure.

Educational Requirements

Current Broker	30 hours Electives every two years (includes 3 hr Core Curriculum) Renewal is on the anniversary of becoming licensed. In the case of agents licensed prior to 2010 the renewal is often on the birthday of the agent.
PreLicense	60 hours Fundamentals 30 hours Practices
First Renewal	30 hrs Advanced Practices 30 hrs Real Estate Law 30 hrs Electives (includes Core)
Managing Broker	
Managing broker Branch Manager Designated Broker	30 hrs Electives (includes 3 hr Core Curriculum)
To get a Managing Brokers License	30 hrs Broker Management 30 hrs Business Management 30 hrs Advanced Real Estate Law

Responsibilities within a Real Estate Firm

Delegating Responsibilities

The Designated Broker may delegate in writing certain responsibilities to Managing Brokers. The Designated Broker must maintain an up-to-date log of any responsibilities or assignments delegated to Managing Brokers or Branch Managers. It must be signed by all parties.

The Designated Broker can delegate duties to a Branch Manager managing an office according to the real estate laws and cooperating with any DOL investigation. Other responsibilities that can be delegated include oversight of the branch licensees including hiring and appropriate licensing, ensuring all subordinates are submitting documents in a timely manner, handling of client funds and property, record maintenance, advertising, reviewing documents, modifying or terminating brokerage service contracts, and following Designated Brokers policies for referring home inspectors.

The Designated broker can delegate responsibilities to a Managing Broker which includes a Branch Manager that can include trust account keeping, handling client funds/property, keeping required records, advertising legally, reviewing of contracts, accessibility of the office, availability of records, and making sure the office policy on referral of home inspectors is followed.

> *A designated broker, for example, can delegate in writing certain responsibilities for a managing broker to oversee a team of agents. These responsibilities can include reviewing of contracts, handling and depositing earnest money and advertising oversight. The designated broker still remains ultimately liable.*

The Designated Broker can also delegate in writing to a managing broker the responsibility to supervise all licensees that have been in the business less than 2 years. By delegating responsibilities, the Designated Broker remains responsible for the conduct of the subordinates.

Fingerprint and Background Requirements

Every Real Estate licensee will be fingerprinted and have a background check for the protection of the public. Real estate agents are negotiating transactions that are the largest financial investment in the lives of consumers. They consult on financing, have access to properties, and negotiate contracts. When listing or selling properties, real estate agents have access to properties and personal property owned by clients. When they fill out purchase and sale agreements they are negotiating contracts that affect the future and investments of clients.

For the protection of the public, the Washington State Legislature added changes to Real Estate License law RCW 18.85.191 requiring all active licensees and licenses applying for active status, renewal or reinstatement have a fingerprint and background check on a regular basis.

All real estate brokers are fingerprinted when they obtain or renew a license after July of 2010. Fingerprints and background check will be required every 6 years as per WAC 308-124A-700.

As of Summer 2016, fingerprinting has been delegated to a vendor with locations throughout Washington State. Fees for fingerprinting and background check are paid directly to the vendor.
If you have been fingerprinted by another agency for another reason, that fingerprint is not acceptable for the Real Estate Department of Licensing. You will have to submit to another fingerprinting along the guidelines created.

Real Estate Assistants

The Department of Licensing created guidelines for agents that hire licensed and unlicensed assistants to help them manage their business. These are just guidelines but it is important to be aware if your assistant is actually performing duties that may require a real estate license.

Unlicensed Assistants MAY:

- Provide information about the characteristics of a listing or the terms of a transaction, as written and approved by a licensee.
- Pick up or deliver documents and keys (basically act as a courier).
- Follow up on loan commitments and pick up or deliver loan documents after a contract has been negotiated.
- Write and place advertising.
- Gather market analysis information.
- Perform normal clerical duties such as typing, scheduling appointments, etc.
- Transport people to properties and surrounding areas of interest. While performing this duty, they may only provide answers that are on preprinted material prepared by a real estate licensee.
- Obtain any public information from government offices, utility companies, title companies, etc.
- Make keys, install boxes, and place signs on the property.
- Greet people at an open house, distribute preprinted media material, and help provide security.
- Submit forms and changes to a multiple listing association.
- Check on the progress of loans, credit reports, etc.
- Receive rent payments and compute commission checks.
- Record and deposit earnest money and security deposits.
- Order or perform repair or maintenance.
- Conduct telemarketing or phone canvassing to schedule appointments to seek clients, **provided**:
    - Compensation isn't conditioned upon receipt of compensation by the licensee or firm.
    - They don't provide any other brokerage services.

Unlicensed Assistants MAY NOT

- Show properties, answer questions, or interpret information about the property, price, or condition.
- Interpret information about listings, titles, financing, contracts, closing, or other information relating to a transaction.
- Fill in legal forms or negotiate price or terms.
- Hold or disburse trust funds.

Perform any act with the intent to circumvent, or which results in the circumvention of, real estate licensing laws

Advertising Requirements

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

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

(1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.

(2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:

(a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.

(b) Not use a name, title, or brand suggesting a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."

(c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."

(d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

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

The firm name must be “clear and conspicuous” in any advertising.

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

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

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

Advertising on Third Party Websites

With the click of the mouse and an agent’s listings can be spread all over the internet on an untold number of 3rd party websites. The challenge is that the agent often does not always know where they are posted and don’t keep the information up to date and accurate.

Social Media Advertising Guidelines

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

Disclosure

Licensed Firm Disclosure should contain the following information:

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

Licensee Disclosure should contain the following information:

- The licensee's name as shown on their license as issued by the WA Real Estate Dept of Licensing. This is NOT required to be your legal name.
- The registered firm name or assumed name in which the licensee is affiliated as registered with WA Real Estate Dept of Licensing.

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

Internet Guidelines

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

Social Media and Banner Ads

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

The Web

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

Email, Newsgroups, Discussion lists, Bulletin Boards

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

Instant Messages

Full disclosure is not necessary if the licensed entity provided the written full disclosure via another format (e.g. Email or Letter) prior to providing or offering to provide licensable services.

Chat
Full disclosure prior to providing or offering to provide licensable services during the chat or in text visible on the same webpage that contains the chat session.

Multimedia Advertising
Full disclosure should be visible as part of the advertising message which includes Web based, executable email attachments and Video.

Procuring Prospects Online

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

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

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

Required Records

All real estate Brokers and Managing Brokers must submit complete copies of their transactions to their firm according to RCW 18.85.285(1) The Designated Broker is responsible that all transaction documents must be submitted to the Designated Broker or Designated Managing Broker within a "timely manner" according to WAC308-124C-125(11). The records must include but are not limited to a copy of the purchase and sale agreement, earnest money receipt, and an itemization of the receipts and disbursements with each transaction.

The Designated Broker is responsible to keep accurate records with include accurate trust account records. In addition, the designated broker is to have an accurate up to date log of all contracts for brokerage services submitted by the licensees. The firm at one location (the main or branch office) must have a transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and correspondence for each real estate or business opportunity transaction and for each rental, lease contract or mortgage collection account. The Designated Broker must ensure that copies of all required records are made available upon demand.

All required real estate records must be accurate and up to date. All required real estate records shall be kept at an address where the real estate firm is licensed to maintain a real estate office. Transactions not stored at the firm must be readily retrievable. A listing of all transactions must be maintained at the firm's licensed office.

All records must be retained and available for the DOL for a minimum of 3 years.

Records may be stored on permanent media storage so long as the storage does not permit modification of the documents. It must be available at any time for viewing and printing in its original form at the Designated Brokers office.

If they are closed for at least one year files can be stored at one central facility in Washington and readily available to the DOL. Records may be stored digitally provided it does not permit modification and is permanent. They must be viewable at the firm's location and indexed.

Termination/Closing

The licenses of real estate Brokers and Managing Brokers shall be kept by their firm. When they cease to represent the firm, the license ceases to be in force. Brokers and Managing Brokers must submit written notification to the Designated Broker for their firm when they terminate affiliation with the firm. The firm through the Designated Broker, shall give notice to the Director of the DOL including surrender of the actual license. Failure of any Designated Broker to promptly notify the DOL of a termination after demand by the Broker or Managing Broker shall be grounds for disciplinary action.

If a firm terminates a Broker's or Managing Broker's license for violation of License Laws or rules the firm shall immediately file a written statement of the facts to the DOL.

A licensed relationship can be terminated unilaterally by either the Broker, Managing Broker, Branch Manager, or Designated Broker. All terminations shall be by written notice to the Designated Broker or the person who they may have designated that responsibility. All terminations must be forwarded to the DOL and becomes effective on delivery to the Department of Licensing. Termination cannot be conditioned on any specific performance by either party.

For example, a Designated Broker cannot refuse to terminate a broker requiring him/her to remain licensed until a certain fee is paid or a listing closed.

Upon application and payment of a fee, the Broker or Managing Broker can be issued a new license under another firm for the unexpired term. The Designated Broker is responsible for a closing firm affidavit when closing the firm.

Trust Accounting, Earnest Money, Auditing

Consumer funds, if held by a firm, must be handled properly. This is an area that must be taken seriously because any misuse of funds can result in a violation of the laws and rules. In regards to these funds, any responsibility for them must be taken care of in a timely manner. Expeditious performance under WAC 308-124D-210 means that a real estate licensee shall perform all acts required as expeditiously as possible. If any licensee exercises control over real estate transaction funds, those funds are considered "Trust Funds."

If "Trust Funds" are claimed by more than one party, the Designated Broker must promptly provide written notification to all contracting parties to a real estate transaction of the intent of the Designated Broker to disburse client funds. The notification must include the names and addresses of all parties to the contract, the amount of money held and to whom it will be disbursed and the date of disbursement that must occur no later than 30 consecutive days after the notification date.

This responsibility can be delegated in writing to a Branch Manager or a Managing Broker in writing in their log of assignments. The Designated Broker is always ultimately responsible for duties delegated.

The Designated Broker is required to keep accurate trust account records. These include:

- Duplicate recording of all receipts, sequentially numbered checks with check register, cash disbursements journal or check stubs
- Client's accounting ledger summarizing all monies received and disbursed for each real estate or business opportunity transaction, property mgmt account or mortgage collection account with separate ledger sheets
- Reconciled bank statements and canceled checks

The Designated Broker with regards to client money must according to WAC 308-124C-125:

- Ensure monthly reconciliation of trust account bank records are completed, up to date and accurate
- Ensure that the trial balance and the reconciliation show the account(s) are in balance
- Ensure policies or procedures are in place to account for safe handling of customer or client funds or property

Time limits for delivery of client funds must be adhered to under WAC 308-124E-100. All Brokers and managing Brokers will deliver or transmit all records agreements and funds to the appropriate Managing Broker, Branch Manager or Designated broker within the SHORTER of the following:

- Two business days (not Saturday, Sunday or legal Holidays) or
- Sooner if the written terms necessitate quicker delivery.

All checks received as Earnest Money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property of business opportunities shall be made payable to the real estate firm as licensed unless it is mutually agreed in writing that the deposit shall be paid to the lessor, the seller, or an escrow agent named in the agreement. The Designated Broker shall retain a copy of the written agreement.

Administration of Funds Held in Trust

General Procedures WAC 308-124E-105

The Designated Broker is responsible for the administration of trust funds and account including:

- Depositing
- Holding
- Disbursing
- Receipting
- Posting
- Recording
- Accounting to Principals
- Notifying Principals and cooperating licensees of material facts
- Reconciling and properly setting up a trust account.

Bank account must be designated as trust account with firm or assumed name. Interest must be recorded, there must be an audit trail of all funds, the Designated Broker is responsible for all funds, funds must be deposited not later than the first banking day after receipt, funds shall be in a permanent record, funds must identify the source and transaction, client's ledger sheets must show any funds, all credit entries must be identified (i.e. earnest money, down payment, rent, interest, etc), the bank account balance must balance, there must be a trial balance, disbursements shall be made by check or electronic transfer specifying the transaction, deposits must be verified before disbursements made, wire transfers must have hard copy, wire transfers must have copy of instructions in files, voided checks on the trust account shall be defaced and retained, commissions paid to another firm may come from trust account.

Disbursements from the trust account must pertain to a specific real estate transaction. No disbursements from the trust account are to be made in payment of a commission owned to licensees or for business expenses or bank charges.

Trust funds held for Real Estate or Business Opportunity WAC 308-124E-110

Trust account bank accounts, deposit slips, checks and signature cards must have the firm or assumed name as licensed. The accounts are to be interest bearing. The firm shall maintain a pooled interest-bearing trust account identified as the housing trust fund account for deposit of trust funds $10,000 or less. Interest from this account is paid to the DOL. The licensee shall disclose in writing to parties depositing more than $10,000 that they have an option to have it in a separate interest-bearing trust account with the interest paid to that party or in the pooled interest-bearing account.

A separate check drawn on the trust account is made payable to the firm as licensed for each commission after the final closing.

No disbursement shall be made in advance of closing to any person for any reason without a written release from both the purchase and seller; except that:

- If the agreement terminated according to its own terms prior to closing, disbursement of funds shall be by the agreement without a written release and
- Funds may be disbursed to the escrow agent designated in writing by the purchase and seller to close the transaction reasonably prior to the date of closing in order to permit checks to clear.

Audits

The DOL conducts routine audits on a regular schedule, and may conduct special audits in response to customer complaints or other priorities. The firm must keep records for at least **3** years. All records must be available to the auditor at the license location upon request.

During an audit, the auditor will:

- Review the law about controlling interest in a real estate business with the designated broker or representative.
- Observe business signage and advertising, including, but not limited to letterhead, business cards, and promotional items.
- Examine the licenses of the firm, designated managing broker, managing brokers, and brokers to verify:
  - The licenses are current and up to date.
  - The licenses are available to the public.
  - The license names are used properly.
- Verify that the firm's Master Business License and Uniform Business Identifier (UBI) numbers match the DOL license.
- Verify controlling interest in the firm.
- Verify all assumed (DBA) names.
- Review the firm's written policy/procedures manual and delegations of authority.
- Confirm that any civil or criminal actions have they been reported to the Department of Licensing (DOL).
- Determine if the office is a main office, a branch, or the only office for the firm.
- Determine where branch office records are kept.
- Review brokerage transaction files within the last 3 years, including:
  - Log files
  - Listing agreements
  - Closed and pending purchase and sale contracts, including addenda special agreements and attachments
  - Failed sales
  - Relationship disclosures for dual agency
  - Mutual agreement dates
  - Closing statements
  - Earnest money receipts (delivery of earnest money) for both listing and sales files
  - All other documents and correspondence related to transactions
  - Reviews of brokerage service contracts involving any affiliated licensee with less than 2 years' experience.

- Review and reconcile brokerage trust accounts, including owners, tenants, associations, and earnest money accounts. The auditor will generally examine bank records for all trust accounts for the 3 months before the audit. However, he or she may request up to 3 years of records if necessary. The audit may review the following records:
  - Bank statements
  - Pre-numbered check stock
  - Canceled checks (back and front)
  - Deposit slips (receipted by bank)

Wire transfer confirmations
Voided checks (defaced)
Check registers or other records of receipts and disbursements.
Brokerage trust account reconciliations.
Property Management trust accounts corresponding invoices or receipts (to verify actual expenses).
Ledgers (liabilities)

- Examine a sample of management agreements to verify agreements are signed by both the designated managing broker and the property owner.
- Review current brokerage (firm) to owner property management agreements to make sure they comply with state laws and rules.
- Examine a sample of leases or rental agreements, and compare the security deposit liability in the lease/rental agreement to the liability in the security trust account.
- Review current tenant leases for compliance with state laws and rules.

What happens after the audit

1) The auditor will prepare a written report to be signed by the designated managing broker or their representative.
2) The auditor will deliver the report to the audit manager, who will determine if more documentation or clarification is needed.
3) The audit manager decides what action to take. He or she may decide to:
   a) Take no further action.
   b) Send a letter asking for more information or documentation.
   c) Send a letter asking for compliance.
   d) Refer the report to our legal staff for a disciplinary action or fine.
4) If the auditor found minor irregularities, and the designated managing broker agrees to come into compliance, the audit will be filed.
5) If the audit is referred for legal action, the DOL will contact the broker with the results when the audit investigation is complete and has been reviewed by the legal staff.

If the audit finds problems

The designated broker should immediately start correcting any problems found in the audit.

- If the audit finds overages or shortages in trust accounts, the designated broker should identify the source of the overage or shortage and immediately take corrective action.
- If the designated broker disagrees with the auditor's finding, he or she should contact the audit manager to request further review.

Disciplinary Actions

The Washington State Legislature has passed the Uniform Regulation of Business and Professions Act RCW 18.235. It was the intent of the legislature to consolidate disciplinary procedure for the licensed businesses and professions under the Business and Professions division of the Department of Licensing by providing a uniform disciplinary act with standardized procedures for regulation and enforcement of laws. The purpose is to assure the public of the adequacy of business and professional competence and conduct. It gives a consistent disciplinary process and standards of conduct for all persons and entities licensed with Business and Professions which includes all kinds of professions …. appraisers, sellers of time shares, bail bond agents, funeral directors, home inspectors, tattoo artists, etc.

Disciplinary Authority
Once you have a real estate license you are under the regulations and laws as passed by the Washington State Legislature. The Department of Licensing under the Uniform Regulation of Business and Professions Act has the Authority to investigate and audit real estate agents and brokers.

RCW 18.235.030 disciplinary authority has the power to:
(1) Adopt, amend, and rescind rules as necessary to carry out the purposes of this chapter, including, but not limited to, rules regarding standards of professional conduct and practice;
(2) Investigate complaints or reports of unprofessional conduct and hold hearings as provided in this chapter;
(3) Issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;
(4) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;
(5) Compel attendance of witnesses at hearings;
(6) Conduct practice reviews in the course of investigating a complaint or report of unprofessional conduct, unless the disciplinary authority is authorized to audit or inspect applicants or licensees under the chapters specified in RCW 18.235.020;
(7) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice or business pending proceedings by the disciplinary authority;
(8) Appoint a presiding officer or authorize the office of administrative hearings, as provided in chapter 34.12 RCW, to conduct hearings. The disciplinary authority may make the final decision regarding disposition of the license unless the disciplinary authority elects to delegate, in writing, the final decision to the presiding officer;
(9) Use individual members of the boards and commissions to direct investigations. However, the member of the board or commission may not subsequently participate in the hearing of the case; (10) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;
(11) Grant or deny license applications, secure the return of a license obtained through the mistake or inadvertence of the department or the disciplinary authority after providing the person so licensed with an opportunity for an adjudicative proceeding, and, in the event of a finding of unprofessional conduct by an applicant or license holder, impose any sanction against a license applicant or license holder provided by this chapter;
(12) Designate individuals authorized to sign subpoenas and statements of charges;
(13) Establish panels consisting of three or more members of the board or commission to perform any duty or authority within the board's or commission's jurisdiction under this chapter; and
(14) Contract with licensees, registrants, endorsement or permit holders, or any other persons or organizations to provide services necessary for the monitoring or supervision of licensees, registrants, or endorsement or permit holders who are placed on probation, whose professional or business activities are restricted,

or who are for an authorized purpose subject to monitoring by the disciplinary authority. If the subject licensee, registrant, or endorsement or permit holders may only practice or operate a business under the supervision of another licensee, registrant, or endorsement or permit holder under the terms of the law regulating that occupation or business, the supervising licensee, registrant, or endorsement or permit holder must consent to the monitoring or supervision under this subsection, unless the supervising licensee, registrant, or endorsement or permit holder is, at the time, the subject of a disciplinary order.

Sanctions under the Act

"Sanctions" are the penalties imposed by the Department of Licensing for violations of the Laws and Rules. This is what can happen as punishment after the disciplinary or hearing process.

RCW 18.235.110 Sanctions

Under the Department of Licensing finds that a real estate agent's conduct has been unprofessional, the Department under the Uniform Regulation Act has the authority to protect the public by any combination of the following:

(a) Revocation of the license for an interval of time;
(b) Suspension of the license for a fixed or indefinite term;
(c) Restriction or limitation of the practice;
(d) Satisfactory completion of a specific program of remedial education or treatment;
(e) Monitoring of the practice in a manner directed by the disciplinary authority;
(f) Censure or reprimand;
(g) Compliance with conditions of probation for a designated period of time;
(h) Payment of a fine for each violation found by the disciplinary authority, not to exceed five thousand dollars per violation. The disciplinary authority must consider aggravating or mitigating circumstances in assessing any fine. Funds received must be deposited in the related program account;
(i) Denial of an initial or renewal license application for an interval of time; or
(j) Other corrective action.

(2) The disciplinary authority may require reimbursement to the disciplinary authority for the investigative costs incurred in investigating the matter that resulted in issuance of an order under this section, but only if any of the sanctions in subsection (1)(a) through (j) of this section is ordered.
(3) Any of the actions under this section may be totally or partly stayed by the disciplinary authority. In determining what action is appropriate, the disciplinary authority must first consider what sanctions are necessary to protect the public health, safety, or welfare. Only after these provisions have been made may the disciplinary authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.
(4) The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct. The stipulations entered into under this subsection are considered formal disciplinary action for all purposes.

Unprofessional Conduct Defined

Though unprofessional conduct can humorously be considered in real estate as having an old dirty car or wearing a polyester leisure suit, it is taken very seriously under the Washington State Laws. License laws are created to protect the consumer from actions by real estate agents that could result in damage to the consumer.

This is the definition of Unprofessional Conduct under the Uniform Regulation of Business and Professions Act.

RCW 18,235.130 Unprofessional Conduct

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(2) Misrepresentation or concealment of a material fact in obtaining or renewing a license or in reinstatement thereof;

(3) Advertising that is false, deceptive, or misleading;

(4) Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;

(5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;

(6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:

- (a) Not furnishing any papers or documents requested by the disciplinary authority;
- (b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;
- (c) Not responding to a subpoena issued by the disciplinary authority, whether or not is the accused in the proceeding; or
- (d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;

(7) Failure to comply with an order issued by the disciplinary authority;

(8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);

(9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;

(10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;

(11) Misrepresentation in any aspect of the conduct of the business or profession;

(12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

(13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence

has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;
(14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action; and
(15) Engaging in unlicensed practice as defined in RCW 18.235.010.

In summary, the Department of Licensing that granted you a real estate license and has the disciplinary authority to audit and investigate your business and conduct.

The Department of Licensing has NO authority to recover funds or award damages to a principal in a transaction.

Examples of Department of Licensing Disciplinary Actions

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.
Action: Broker's license suspended until such time as he responds to our request for information.

Finding: Failed to keep us advised of his address of record, resulting in our being unable to locate the business to conduct an audit.
Action: Broker's license suspended until such time as he responds to our request for information.

Finding: Repeatedly failed to permit us to conduct an audit of the company's records and to respond to our requests for information.
Action: Broker's license revoked for 10 years or until she submits to a complete audit and provides all records requested.

Finding: The Respondent engaged in unlicensed activity by failing to timely notify the department of a change of business location.
Action: Broker's license is suspended for 1 year (stayed for 2 years) and fined $500.

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

Section 1 Complete Quiz in Workbook

Section 2

REAL ESTATE LAW OF AGENCY

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

In July 2010 many changes were made to real estate license laws. All real estate agents are "Brokers" and associate brokers are "Managing Brokers." Firms will all now have a license.

Section 2 Objectives

As a result of taking this chapter of the Washington Real Estate law class 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 5 exceptions to the presumption of buyer agency.
- Define "client" relationships and when a prospect becomes a client.
- 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."

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.

There is no federal law or statute that all real estate licensees in the country must follow. License laws originate in the individual states. 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.

Effective January 1, 1997, the Law of Real Estate Agency defined our role by statute in Washington State. NOTE only a handful of states in the US have Agency Law!

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

1. Clarify the law of agency as applied to real estate brokers and salespersons.
2. Create presumptions of agency relationships with customers consistent with their natural expectations, while retaining some flexibility for alternate relationships,
3. Reduce instances of dual agency,
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 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

(1) "**Agency relationship**" means the agency relationship created under this chapter 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.

(2) "**Agent**" means a licensee who has entered into an agency relationship with a buyer or seller.

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

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

(5) "**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.

(6) "**Buyer's agent**" means a broker who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(7) "**Confidential information**" means information from or concerning a principal of a licensee 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.

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

(9) "**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.

(10) "**Owner occupied real property**" means real property consisting solely of a single family residence, a residential condominium unit, or a residential cooperative unit that is the principle residence of the borrower.

(11) "**Principal**" means a buyer or a seller who has entered into an agency relationship with a licensee.

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

(13) "**Real Estate Firm**" or "firm" have the same meaning as defined in RCW 18.85.

(14) "**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 of the parties.

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

(15) "**Seller**" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental /lease transaction

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

(14) "**Seller's agent**" means a broker who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

Creating Agency Relationships

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.

Express Agreement

Agency can be created by oral or written agreement. Sometimes it is thought that no agency exists unless there is a written agreement, but a written contract is NOT required to create an agency relationship. Actions and conduct can create an agency relationship.

The most common agency agreements include the listing agreements and buyer agency contracts.

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 Law of Agency in Washington State creates the presumption of buyer agency when a licensee performs brokerage services for a buyer. The agency relationship is implied by the actions of the agent.

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, for example.

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.

The agreement to pay or payment of compensation does NOT establish an agency relationship between the party who paid the compensation and the broker according to the Law of Agency RCW 18.86.

When a seller lists her home with a real estate broker, the listing broker shares a portion of the commission typically with the real estate broker that brings the buyer. This does not create an agency relationship between the seller and the buyer's broker even though there is a commission agreement, for example.

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

Chapter 18.85 RCW is the Real Estate License Law. The performance of any of the following acts by a real estate broker or managing broker would be construed as brokerage services according to Real Estate License Law RCW 18.85.010 (1). A broker performs brokerage services while acting for another for commission or other compensation or the promise thereof, or while acting in his or her own behalf, if he/she:

a. Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;
b. Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;
c. Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental or lease of the land upon which the manufactured or mobile home, or will be, located;
d. Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or
e. Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts.

Commencing an Agency Relationship

When a broker 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.

The Agency relationships in the Law of Agency commence at the time that the licensee undertakes to provide real estate brokerage services to a principal.

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

a. Showing property to prospective buyers.
b. Cold calling to neighbors about a new listing.
c. Serving a cup of coffee to a prospective buyer.
d. Answering questions from an ad call when on floor time.
e. Searching the MLS for properties for a buyer.
f. Negotiating a lease for a tenant.
g. Making repairs to a property that is for sale.
h. Discussing market value of a property with a seller.

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 (a), (b),)(d), (e), (f) and (g). Serving coffee and making repairs are not actions that would require a real estate license.

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 be signed "as soon as reasonably practicable" according to the law!

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" law. 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. There is a concern that buyer's brokers will try the same thing so a task force is studying this issue for the Dept of Licensing to determine if a law needs to be written to protect buyers.*

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.

Buyer agency

According to the Law of Agency, the broker is presumed to be a buyer's agent at the time he or she performs brokerage services. Therefore, when a prospective buyer walks into the door of the real estate office, when the agent performs brokerage services, the agent becomes an agent of the buyer. This agency relationship is presumed though there are exceptions. Buyer is also means tenant.
As of January 1, 2024, a broker must have a Brokerage services Agreement signed with the buyer "as soon as reasonably practicable" when you are going to perform brokerage services.

Seller Agency

The most common written agreement creating an agency relationship with a seller is the Listing Agreement. The listing agreement discloses agency to the seller. Remember seller also means landlord.
It is the required Brokerage Services Agreement that is required by law since January 2024.

Commercial Representation

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.

Who are you Representing as an Agent?

Be very clear with a consumer who you are representing. There should be no confusion. That is the purpose of the Brokerage Services agreement.

Exceptions to the presumptions

A licensee who performs real estate brokerage services for a buyer shall be deemed a buyer's agent. There are 5 exceptions when a broker is not presumed 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. Brokers firm has appointed the broker to represent the pursuant to a written agency agreement.
2. Brokers firm has appointed the 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 byer pursuant to a written agency agreement between the firm and the buyer, in which case the broker is a dual agent. *The seller would sign the listing agreement and the buyer would sign the buyer agency agreement.*
3. The broker is the seller or one of the sellers; or.
4. The parties otherwise in writing after the licensee has complied with section 3(1) (f) of the act." *To provide a pamphlet on the law.*

To avoid any possible misunderstanding by a consumer and avoid any chance of undisclosed agency. It is imperative that the real estate licensee know at all times whom they represent! Again, this is very important… know who you represent at all times!

In- House Transactions and Limited Dual Agency

When an agent sells or leases a property that is listed with the same broker, the agency relationship becomes slightly more complicated.

> 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 dual agent, and must obtain the written consent to both parties as required. In such case, each of the brokers shall solely represent the party with whom the broker has an agency relationship, unless all parties agree in writing that the broker is a dual agent.
>
> *Consider if there is a team of brokers working under a managing broker at a firm. If one broker represents the seller with a listing and another member of the team has a buyer, they each represent the party that they have an agency relationship. The managing broker of the team and the designated broker would most likely both be considered dual agents.*

When taking a listing, the broker is the agent of the seller. Sellers think they are listing with the "office" or the "firm." It is important to be more conscious of keeping confidential information away from the other agents in the office. In addition, it is important for brokers to explain to the seller, that they need to do the same and be careful of giving away confidential information on their own property listing to fellow brokers in the same company.

The same goes for the times the agent is representing the buyer. The buyer needs to be made aware that the other agents that answer the phone at the office do NOT represent them exclusively in a dual agency situation.

> *When a real estate firm has a listing, the agreement has a clause authorizing limited dual agency. If another agent under the Broker's supervision has an offer on the property for his or her clients, then the Designated Broker (or managing broker is responsible for supervision) becomes a dual agent. The listing agent represents the seller. The selling agent represents the buyer.*

Transaction specific agency relationships

There may be situations where you work with a seller and/ or buyer in more than one transaction. The new Law of Agency is "transaction specific."

> "A licensee 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 same party in a different transaction involving that party, if the licensee complies with this act in establishing the relationships for each transaction."

This situation could happen if a licensee represents a buyer on the sale of a house. Then the sellers decide that they want the same licensee to represent them in the purchase of their next home.

Agency Confusion

For example, confusion could exist with clients as to agency representation.

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 limited 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.

Discussion of the agency relationship with prospects is extremely important. The prospect needs to understand if you are representing their best interests.

Buyer Agreements

The Law of Agency creates a presumption of buyer agency. 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.

A written agreement with a buyer:

- Discloses the agency relationship with the buyer in writing.
- Gives the buyer written consent for dual agency.
- Details terms of compensation.
- Can protect agent's commission if buyer purchases with another agent.
- Puts commission in writing if there is no listing agreement.

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.

There are times that the real estate agent feels compelled to negotiate some personal property or damage for the new buyer from the previous seller after the sale, but the broker is no longer an agent under contract.

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 agent after looking for properties may choose not to continue working together.

4. Notice from one party to another

There are times that the principal NOR the agent want to continue the relationship.

When working under a listing agreement, there is a term agreed upon in the contract. 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.

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 broker 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 broker 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 a broker has a listing that is sold pending; the broker 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 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. The real estate broker must disclose material facts that are known.

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

   The real estate broker 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 broker 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 real estate agency in the form prescribed in the Law of Agency to all parties to whom the licensee renders real estate brokerage services before the party;

1. Signs an agency agreement with the licensee
2. Signs an offer handled by the licensee
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. It is not required to have the prospect sign or initial the pamphlet as proof of receipt. It is important to note that receipt of the pamphlet is on the listing agreement and on the buyer agency agreement.

7. To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee 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."

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

Confidential Information

Real estate brokers are often expected to keep certain information from the principal confidential. This information can include what limits the seller or buyer has regarding sale price, the motivation for selling or the financial situation of either party if it is not relative for the transaction. 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.

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.

Information must be disclosed to the buyer if the information would affect:

- the buyer's decision to buy, or
- how much the buyer would pay.

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."

This is the in the Law of Agency and NOT in the Property Information Disclosure Law.

One of the hottest issues in the real estate industry is a negative stigma that may affect property. A negative stigma can include:

- A property psychologically impacted
- An event that occurred or suspected to have occurred on the property
- A stigma that does not affect the physical condition or title to the property.

Examples of negative stigmas.

- A neighbor's kid commits suicide in the backyard.
- A ghost has appeared to the brother in the dining room.
- The house has been burglarized every month on the 15th of the month.
- A group of sun worshippers arrives in the yard each solstice.
- There is a sex offender next door.
- There was a gang shooting in the neighborhood.

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 broker or encouraged by a broker. Consult with the designated broker whenever there is a question about disclosure.

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.

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 presented a pamphlet on the Law of Agency, to make a good faith and continuous effort to find a buyer for the property; except that seller's 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.

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 presented a pamphlet on the Law of Agency, 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.

Duties of a Limited Dual Agent

There are situations when a broker 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 broker may act as a dual agent only with written consent of both parties to the transaction after the dual agent has provided the principals a pamphlet on the Law of Agency. Dual agency consent must be in writing with a statement of the terms of compensation.

Dual agency can occur when an agent sells his or her own listing, for example. Some real estate firms allow dual agency for a broker and some offices have some restrictions. It can depend on the policies of the firm and not the Law of Agency.

In addition, when an agent sells an in-house listing, the designated or managing broker can become a dual agent. This can be a balancing act for a designated broker if there is a problem with a transaction and the designated broker is 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 broker shows his or her own listing to a purchaser that they represent, are they automatically a dual agent.
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 as long as it is discussed and in writing.

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.

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

Are you required to show a buyer you represent properties that are for sale by owner?
You are not obligated to show property 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 that you show to prospective buyers, are you breaching your duty to the seller by showing them other similar properties?
According to the duties of a seller's agent, you can show competing properties to a buyer and you can list competing properties for your listing.

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 RCW 18.86 regarding compensation:

1. In any real estate transaction, the firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between the firms.
   Note, that the commission is always paid to the designated broker of the firm according to Real Estate License law.
2. An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the broker.
   In the past the brokers 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's firm 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 paid to the firm as a referral fee
4. A buyer may agree that a buyer's firm may share with another firm 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 firm may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.
   If a broker is to get paid by a buyer, seller or another party for services in a sale, it 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. Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a broker to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer.
   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 statue of Frauds RCW 19.36.010.
   If an agent shows a property that is NOT listed to a prospective buyer, the seller may not pay commission if the buyer goes to purchase the property without the agent. If the buyer and the seller did not sign any agreements to pay commission, then the agent cannot sue for commission.

Remember, ALL commission payments are paid to the firm. Commission is never paid directly to a broker.

Limiting Brokers Liability and Eliminating Imputed Knowledge

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. The law of Agency eliminates vicarious liability. According to the Law of Agency:

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 broker is not liable for an act, error, or omission of a subagent under this chapter, unless the broker participated in or authorized the act, error, or omission. This subsection doesn't limit the liability of a real estate broker of an act, error, or omission by a broker licensed to that firm.

This changes the liability for the real estate broker in Washington State. If a broker, for example, makes a decision that causes injury or financial harm to a principal, the principal is not liable for the act by the broker… unless the principal participated or benefited.

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. In other words, what the broker knew, the principle was considered to have known… The information was automatically imputed to the principal.

According to the Law of Agency;

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 with to provide for imputed notice with respect to offers and acceptances, and other contractual notices given under a purchase and sale agreement or lease.

Statutory vs Fiduciary Duties

Brokers will only have statutory duties and not fiduciary duties in dealing with their principals. This eliminates any confusion.

In 1996, the common law fiduciary duties owed by an agent were changed by the passage of the new chapter on real estate brokerage agency relationships, The Law of Agency. 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. The laws more specifically identify the role and duties a broker has regarding their principals. The Law of Agency 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.

Ethical Considerations

One of the most difficult aspects of the real estate transaction is managing the relationships, egos and personalities of the buyer, seller, lender and the other agents involved. The best way to make sure that there is not a lack of understanding or miscommunication is to make sure that there is a good line of communication between all the parties.

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 or where the 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.

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.

Remember to contact your designated broker if there are any questions you may have regarding the Law of Agency.

Section 2 Complete Quiz in Workbook

Section 3

Ownership, Distressed Properties, Land Use, and Property Management

This chapter is an overview of Property ownership and Leasing including interest in real property, co-ownership and transferring ownership and property management.

Section 3 Objectives

As a result of taking this chapter of the Washington Real Estate Law class the agent shall be able to:

- Know the difference between freehold and leasehold estates
- Know the difference between an encumbrance and a license.
- Define encroachments, trespass, nuisance and CCR's
- Identify the different ways to hold title to property
- Know the difference between voluntary and in-voluntary transfer of ownership
- Understand the distressed property law and licensing of short sale negotiators
- Know primary state and federal laws affecting land development and environmental issues.
- Know the basic Landlord Tenant act in Washington State and the Mobile Home Landlord Tenant Act.

Interest in Real Property

When we are first introduced to real property ownership we are told that we are buying a "bundle of rights" and a "bag of restrictions." Interest in real property can be acquired in many ways. There are also many restrictions that affect our possession and use of real property.

Bundle of Rights

Freehold Estates

Fee Simple Estate

In most real estate transactions in the U.S., the transfer of interest in real property is "fee simple." The interest in the real property is inheritable, transferable and perpetual. You and your co-owners can own property with no timeline, can pass it down to heirs and can sell it. A condition can in some cases be tied to the interest of the property that can limit the fee simple estate and it could pass back to the grantor.

Life Estate

If the transfer of the interest in a property is based on someone's lifetime, it is called a life estate. The transfer of ownership to another with a life estate means generally that the person can retain an estate and live in the property until their death.

Leasehold Estate

This is interest in real property for a period of time giving the tenant the right to exclusive possession but not ownership.

Bag of Restrictions

Encumbrances and Easements

This is interest in property but not including the right to possess the property.

An encumbrance can be financial which would include a mortgage or deed of trust, construction lien, judgment, tax lien and assessments. These would also restrict the ability to sell the property.

Encumbrances can also be non-financial and include easements for driveways, horse paths, and power lines. Easements can be created by express grant or reservation (on the deed), Plat maps, implied from prior use (like a well-worn horse path), estoppel or prescription.

Licenses

A license grants permission to enter another person's property for specific purpose but does not create an interest in the property. This can include a ticket to a movie or a reservation at a B&B.

Encroachments

An encroachment is a structure or object that extends over the property line and intrudes on the next property. An encroachment can include a garage, deck, fence or drainfield.

Trespass

Entering into another person's real property without permission is called trespass. It can be a person trespassing or an item of personal property or a car parked over the property line.

Nuisance

Any activity that substantially interferes with an owners use and enjoyment of the property is called a nuisance. It can be loud music or a backyard that becomes a garbage dump.

Covenants, Conditions and Restrictions (CCR's)

A private restriction found on the deed and runs with the land is a CCR. Most often they are found on deeds to condominiums and subdivisions.

Ways to hold Title to Property

Ownership of real property can take many forms. A single party can own property with rights to transfer, inherit and encumber it. That is called ownership in severalty. When there is co-ownership, those rights are limited by the agreement between the parties and the laws in the state.

Co-Ownership of Property

Community Property

A couple that is married can take title as community property. Their ownership and future transfer is affected by Washington State community property laws. One spouse can own property as separate property or it can be community property of both spouses. This also includes registered domestic partners. If a couple has lived for a long time inn a marriage- like relationship it could be considered a common law marriage and community laws would apply. Community property laws are in place to make sure there is an equitable division of property. If there is separate property, each spouse owns in severalty and each as an undivided ½ interest in all community property.

Community property rules apply to assets acquired during the marriage, income, items purchased with community funds and co-mingled funds. Property or income inherited, gifts, acquired before marriage and profits from separate property as long as they are not comingled would be considered separate property.

There may be a community property agreement signed by the spouses or a pre-marital agreement.

One person cannot sell the property or mortgage it, for example, without the signature of the other.

A real estate agent is not licensed to determine what property and assets are community property and what are not.

Joint Tenancy

Two or more people can take title as joint tenants. There are rules for creating and maintaining joint tenancy of property including the most important factor that it must be in writing. There are four unities to create joint tenancy:

1. Unity of possession means that all co-owners have the right to occupy the property.
2. Unity of interest means that all must have an equal interest in the property.
3. Unity of time means that they all acquired their interest at the same time.
4. Unity of title means that they all took title through the same deed or will (if inherited.)

Joint tenants share right of survivorship. This means that when one tenant dies, that person's interest passes to the surviving joint tenants.

A joint tenant can encumber his or her interest without the other tenants' permission. They can agree to give one or more joint tenants exclusive possession of the property.

A joint tenancy is terminated by court action or it can be severed by agreement, declaration or by transfer. Severance will change it to a tenancy in common.

Tenancy in Common

When two or more people want to take title as tenants in common their interest does not have to be equal. There can be any number of tenants who divide up the ownership. Each person has a right to possess and occupy the whole property regardless how small the percentage of ownership. Tenants in common share the major unity.

Unity of possession. They all share the right to possess and occupy the property and cannot exclude another tenant from the property. In addition, they share the right to contribution where the tenants share of expenses is equal to the portion of interest.

A tenant in common is free to sell, will or encumber the passion of undivided interest without the consent of the other tenants. It can also be transferred by foreclosure or bankruptcy. A tenancy in common can be terminated if all parties agree or by the courts.

Ownership of Property

Property and business ownership may be by an individual, group of individuals, or a legal entity. Ownership will be influenced by the number of owners and the tax implications. When a real estate broker is charged with listing or selling property or dealing with a business that is owned by one or more individuals or by an organization, it is imperative that the broker know whether that party has the right to sell, is the authorized signatory, and has the documentation to support the sale of the property.

Sole Ownership

An individual can old title to property or own a business. It is the simplest form of ownership.

General Partnerships

A general partnership is when two or more individuals are co-owners of a business. In Washington State , they are not required to file paperwork to form a partnership. Each partner has unlimited liability for the acts of the others in the partnership for the business. Most partnerships have a written agreement as to the management, control and disbursement of assets. Partnership property is property purchased with partnership funds or brought into the partnership. It may be acquired in the partnership name. A partner can't transfer interest in partnership property to someone outside the partnerships. Any sale of partnership property must be agreed to by all partners. When a partner dies, the interest in partnership property goes to the surviving partners. Limited Liability Partnerships may include general partners and limited partners. The limited partners don't participate in the management and are protected from the debts of the general partners. The limited partnership must file a certificate in Washington.

Limited Liability Companies (LLC's)

A limited liability company is created by agreement filed with Washington State. The partners can choose any type of management including how to allocate income or losses. The partners are subject only to limited liability for the company's obligations. They fall under the Limited Liability Company Act in Washington.

Corporation

A corporation must file Articles of Incorporation with the Secretary of State. A Domestic Corporate is the term used to designated that it is organized in compliance with Washington State laws. A corporation from another state or country must register in Washington State and is referred to as a foreign corporation. It must be registered in Washington State to do business here. The ownership interest in a corporation are divided into shares. A corporation is owned by shareholders and it is controlled by a board of directors who follow the bylaws. The corporation is legally a separate entity from the shareholders and treated as an artificial individual. The corporate officers run the business of the corporation. Transfer of property must require authorization from the board of directors.

Joint Venture

A joint venture is usually created with a transaction and not as a business entity that is ongoing. No title can be held in the joint venture's name.

Syndicate

A syndicate is not a recognized legal entity. It is when two or more people unite and pool their resources to own, develop, and/or operate an investment. It can be in the form of a REIT, general partnership, limited partnership, corporation, joint tenancy or tenancy in common.

Real Estate Investment Trust (REIT)

This is a group of investors that avoid double taxation when certain requirements are met. The trust sells certificates that are urchased by investors, and then the trust invest in real estate, mortgage osr both. Profits are distributed to investors.

Transfer of Ownership

The process of transferring real property ownership from individuals or organization to another is called alienation. This can be voluntary or involuntary.

Voluntary Alienation

This is when an individual or individuals or an organization voluntarily sell or will property to another. All or part ownership is transferred with a deed. The process of alienating real property by deed I called conveyancing. A valid deed must meet these requirements:

1. It must be in writing.
2. There must be words of "conveyance" and a description of the property
3. It must identify the grantee (buyer). The person buying or being transferred ownership to the property.
4. It must be signed and acknowledged by a competent grantor (Owner) It can be signed using a valid Power of Attorney.
5. It must be delivered and accepted by the grantee (buyer).

Property transferred by will, must be in writing, signed by the one who made it, and attested by two or more witnesses in Washington.

In-Voluntary Alienation

Occurs when property is sold or transferred without the owner's signature which can include foreclosure or condemnation.

Will

When someone dies without a will it is called intestate. The heirs take possession of property according to the probate court decision. When a person dies without a will and has no heirs, the property escheats to the state.

Adverse possession

When someone is not on the title to the property they can make a claim for part or full ownership. It can be as small as a foot along the property line for the fence a neighbor claims or as huge as a squatter on vacant land. In Washington State, the requirements for an adverse passion claim include:

1. Actual. It must occupation of the property.
2. Open and notorious. It has to have some open evidence for the claim putting the owner on notice
3. Hostile. The owner can't allow or must fight the possession. The occupant must treat the property as their own.
4. Exclusive. The occupant must not share the use with the owners.
5. Continuous and uninterrupted for a specific period of time. This is ten years in Washington State or seven years of taxes are paid.

Natural Changes can occur when a property changes shape due to a natural issue which can include a build up of soil or the loss of land from water.

Condemnation occurs when the property is take by the government for public use which could include for a street, utility or public space as a school or park. The government must pay just compensation for the fair market value of the property.

Dedication is the transfer of property to the public without compensation. This could include a developer dedicating an area for a parks.

Foreclosure can happen when the property has a lien that is not paid. This could force the sale of the property to pay off the lien.

Distressed Properties

Short sales and distressed properties are surrounded by complicated issues. If a homeowner is delinquent on payments, has lost income due to loss of job, or is in a financial bind their home might be in jeopardy. Often, the real estate agent is called in first to determine the approximate market value. Then the agent is often asked to help the homeowner look at their options. But, there can be complications that the real estate licensee is not aware of, implications that might affect a homeowner after a sale, and other liens that have not been disclosed.

In desperation, some of these homeowners are turning to businesses and individuals that claim to repurchase mortgages in order to allow the homeowners to remain in their homes. Most of these are the result of scams. The Distressed Property Act of 2008 RCW 61.34 was passed in 2008 to focus on regulating the activities of home consultants who claim to help stop a foreclosure for a fee. The act also provided legal rights to home sellers through distressed property protections and distressed home consultant provisions. Providers of loan modification services to Washington State residents involving their Washington property must be licensed under the Mortgage Broker Practices Act RCW 19.146 or the Consumer Loan Act RCW 31.04 unless explicitly exempt under those acts. In July 2011 the Foreclosure Fairness Act was passed that also gives the homeowner who is in a distressed situation behind on their mortgage some more time to get counseling.

The Washington State Department of Licensing wants real estate licensees to be aware that all licensees are not equipped with the proper training and experience to handle distressed properties and/or short sales. According to the Department, the most appropriate service a licensee can give a distressed property owner is to refer them to resources that can help them including HUD certified counselor or legal counsel.

Short Sale Negotiation

A short sale can occur when the proceeds of the sale will not cover the balance of the mortgage. The lienholder would have to agree to the sale and accept less than the lien which would include the mortgage balance, fees and costs. Real Estate Owned (REO) is a term that refers to property owned by the bank after a foreclosure.

Not all brokers are equipped with the proper training and experience to handle distressed Properties, short sales, REO and properties in receivership or bankruptcy. Sometimes the most appropriate service a licensee can give such a property owner is to refer the owner to legal counsel to discuss options and the seller's rights or a short sale negotiator.

A short sale negotiator in order engage in negotiations for compensation the person must have either a (1) real estate license under RCW 18.85, (2) mortgage loan originator license under the Washington Consumer Loan Act RCW 31.04 or the Mortgage Broker Practices Act RCW 19.146, or (3) be an attorney licensed to practice law in Washington.

Real estate licensees must be providing real estate brokerage services for the transaction in order to negotiate a short sale on behalf of either party to the transaction. Real estate agents may not charge any additional fee above the normal and customary commission to provide short sale negotiation services. Real estate and mortgage professionals engaged in short sale negotiations should review any activities that might be considered the unauthorized practice of law.

Foreclosure Fairness Act (HB 1362) (61.24)

The Foreclosure Fairness Act was passed by the legislature and took effect in July 2011. The Act gives homeowners a fighting chance to stay in their home and it gives the homeowner avenues to get out if that is their option. "Foreclosure may sound like someone else's problem but when it is happening to tens of thousands of families, like it's happening right now, it's our shared problem" said Sen. Adam Kline who sponsored the Senate companion bill, SB5275) It really tears the connecting threads of our neighborhood."

Homeowners who fall behind on their mortgage payments will have 30 days from the time that they get an initial letter from their lenders to respond and ask for a period of time called "meet and confer." If they do, they will get 60 days to talk with the lender and counselor before a notice of default is issued. During this time, a housing counselor or a lawyer can refer a homeowner to a new third-party mediation progress. If they get that referral, borrowers will be able to have in person negotiation with their lenders and a third-party mediator who is charged with ensuring that both parties participate "in good faith." At the suggestion of the Washington Bankers Association, the bill also requires lenders to pay $250 for every default notice. The proceeds from which will raise an estimated $7.5 million to support the expansion of housing counseling programs. The fee will primarily fund more housing counselors but will also fund outreach campaigns and enforcement dollars for the Washington State Attorney General's office.

The foreclosure fairness act gives homeowners rights that they didn't have in the past. It imposes obligations on the lender as well. The lender is required to send a notice of pre-foreclosure options to the homeowner explaining that they are in default. This triggers a 30 day period which the homeowner can use to exercise their rights. First the homeowner MUST acknowledge that they have received the letter and exercise their rights. They can request a face-to-face meeting with the lender. Next, they can request mediation with the neutral mediator trying to remediate a resolution short of foreclosure or some alternative to foreclosure. Homeownership counselors are available in Washington State that can help distressed homeowners walk through this process.

It seems intimidating to contact the lender when a homeowner is in default but now they have options and counselors to help. The non-profit HUD counselors are certified. The foreclosure fairness act does not provide any relief for the homeowner but it does provide a process to follow to find the homeowners best option and give the homeowner more time to work on it. Options might include a loan modification, short sale, deed in lieu of foreclosure, or maybe even a reverse mortgage. But the most important part of this new Foreclosure Fairness Act is that the homeowner must respond to the lender within 30 days of the date of the pre-foreclosure letter so the foreclosure process will be delayed for those 90 days to allow negotiation. If the homeowner doesn't call the lender the foreclosure can start within 30 days. A distressed homeowner can get more information from a new website called www.Wahomeowner.com. There is also information at the Washington state Attorney General's office website and at the Washington REALTOR website.

Land Use and Development

Growth Management Act

In 1990 the Washington State legislature adopted the Growth Management Act RCW 36.70. The Growth Management Act affects all growth and development in the state of Washington. The goal was to plan growth by identifying critical areas and natural resource lands, designating urban growth areas and preparing comprehensive plans. It was written in response to rapid population growth, concerns of suburban sprawl, environmental protection, affordable housing, shoreline management and quality of life. It is also to assure that all new development is served efficiently by adequate public facilities.

The Growth Management act created a framework for how cities and counties could comply with the goals of the act. City and county development regulations including zoning and subdivision must be consistent with comprehensive plans under the Growth Management Act. The GMA required that new development be concentrated in urban growth areas. Under the plan, these areas must be served by public facilities and services including roads, parks and open spaces. This will create high density areas to help protect natural resource and critical areas.

The state population is predicted to grow roughly from approximately 7 million people in 2015 to approx. 9 million in the next 25 years.

The Growth Management Act hearing board resolves disputes concerning planned development regulations under the GMP. The governor has the authority to impose sanctions in cities and counties that don't comply.

Environmental Laws

National Environmental Policy Act (NEPA)

The National Environmental Policy Act requires that federal agencies provide an Environmental Impact Statement for any development or action that would have an impact on the environment including development, roads and, waste management.

Washington State Environmental Policy Act (SEPA)

In Washington State, the law requires an Environmental Impact Statement (EIS) for all developments that could have an impact on the environment. It includes all state, county and city development projects and also private development that would require government approval. Though a development may meet all zoning and building codes, it could still have a negative impact on the environment. A full EIS may be required to determine how the development might impact the environment, This can affect whether it can be approved or denied by the city or the county.

Washington State Shoreline Management Act

Washington State had shoreline throughout the state from small lakes to the Pacific Ocean. The Shoreline Management Act is designed to protect the shorelines by regulating development. It applies to the coast, the shores of lakes larger than 20 acres and to streams. There are structures from homes to docks that are affected by the Act. Structures that were in place prior to the ACT are "grandfathered" in if they are maintained. A substantial development permit is required from the county or city if the development is on or near shoreline.

Washington State Model Toxics Control Act
This act deals with hazardous waste cleanup.

Federal Environmental Response, compensation and Liability Act (CERCLA) "Superfund"
This is a 1980 law that deals with the clean-up of environmental and hazardous waste. It is enforced by the Environmental Protection Agency and taxed the petroleum industry. It created a national inventory of hazardous waste sites, and identified potentially responsible parties for cleanup of the sites. The law became known as the Superfund. A hazardous substance is any material that poses a threat to public health or the environment.

Federal Clean Water Act
This act is to provide for clean water and prevent water pollution. It regulates wastewater treatment facilities and prohibits discharges of pollutants into lakes and waterways.

Federal Clean Air Act
This provides for control of the emission of air pollutants that are harmful. If a development is going to emit pollutants it is required to obtain permits.

Brownfields
A brownfield site is land where the expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. I t can include an abandoned factory, former dry cleaners, vacant gas station, illegal drug lab, etc.

In June 2013, the Washington State Legislature passed a bill that will make it easier for communities to clean up brownfield sites across the state. It modified the Washington's Model Toxics Control Act and creates new tools for brownfields cleanup. "There are a large number of toxic waste sites that have been identified in the department of ecology's priority list," according to the bill "Addressing the cleanup of these toxic waste sites will provide needed jobs to citizens of Washington state."

Lead Based Paint
This Federal law requires that all housing built before 1978 requires disclosure to the buyer and tenants on a form signed by all parties. Seller must give purchasers the opportunity to conduct a lead paint inspection.

Effective in 2010, contractors performing renovation, repair, and painting projects that disturb lead based paint in homes, child care facilities and schools built before 1978 must be certified by the Environmental Protection Agency (EPA) and must follow specific lead-safe work practices to prevent lead contamination. They will have to take an 8 hour training course from an EPA approved training provider.

Radon
Radon is a cancer causing radioactive gas that is produced by the natural decay of radium. It is estimated to cause about 21,000 lung cancer deaths per year. About 1 of every 15 homes in the U.S. is estimated to have elevated radon levels. Few homes test positive for radon in the Puget Sound area.

Asbestos

Asbestos is used for insulation and fire resistance in more than 3,000 types of building materials. It is generally not a hazard unless it is disturbed and releases particles in the air which can enter the lungs causing respiratory diseases and cancer. Make sure that if there is any evidence of asbestos in a house including old popcorn ceilings, furnace insulation or outside siding that the seller and/or buyer get an inspection of the materials especially if there is a plan to renovate. Disposal of asbestos materials is also highly regulated.

Underground Storage Tanks (UST)

Storage tanks of heating oil are often old and possibly leaking. Empty tanks pose problems because the chance for collapse. They can be leaking and the seller and buyer needs to be aware of the existence of a tank. If it is currently in use, it should be checked to see if there is leakage.

Carbon Monoxide

Washington State passed a law that became effective in 2009, that requires that homes for sale must install carbon monoxide detectors prior to the buyer taking occupancy. In addition, they are required in all rental units.

Mold

In Washington State, a landlord is required to provide a tenant with a booklet about mold.

Environmental Site Assessment (ESA)

Any real estate can involve an environmental Site Assessment especially commercial sales. The purpose it to identify potential or existing environmental liabilities.

Property Management

Property Management Agreements

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

Property management agreements must include:

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

Each owner of property managed by the firm must be provided a summary statement as provide in the property management agreement for each property showing the carried balance, total rent receipts, owner contributions, other receipts, itemization of all expenses paid, number of units and ending balance.

The firm may provide other service for the owners of properties with full disclosure of Broker's relationship with any parties providing services.

Any amendment of modification to the property management agreement must be in writing.

Property Management Exemptions to Washington State Licensing

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

Certain positions in property management are not required to have licensed brokers. A person is exempt from requiring a real estate brokers license if the person is employed or retained by, for, or on behalf of the owner or on behalf of a designated or managing broker if the person is limited in property management to any of the following activities:

(a) Delivering a lease application, a lease, or any amendment thereof to any person;

(b) Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment for delivery to and made payable to the real estate firm or owner;

(c) Showing a rental unit to any person, or executing leases or rental agreements, and the employee or retainee is acting under the direct instruction of the owner or designated or managing broker;

(d) Providing information about a rental unit, a lease, an application for lease, or a security deposit and rental amounts to any prospective tenant; or

(e) Assisting in the performance of property management functions by carrying out administrative, clerical, financial, or maintenance tasks.

All other persons handling property management activities are required to obtain a real estate brokers license.

Personal Property Management

A Broker or Managing Broker cannot sell or lease property for another, for example, unless the entire transaction is conducted through the firm. There are exceptions to this rule if the Broker is selling or leasing their own property. All brokers conducting any real estate activity on their own property must disclose that they do have a license an advertising and contracts. Since the designated broker is potentially responsible/liable for all brokerage activity of the licensees affiliated with the brokerage, licensees leasing or selling activity, even their own property, must have the designated broker's consent. The Firm may have other policies for a broker selling or leasing their own property. The Errors and Omissions Insurance Policy may dictate the Designated Broker's responsibility in those situations.

Property Management Trust Funds

Trust accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285.
Interest-bearing accounts may be established for Property Management funds if in writing for an individual owner established in writing with interest to accrue to the owner and for only damage or security deposits for tenants of residential properties managed by the firm with interest paid to the owner under certain provisions under the Landlord-Tenant Act RCW 59.18.270.

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

Fair Housing Prohibited Acts for Property Management

Fair housing laws prohibit the following housing actions:

- Refusing to rent to someone or telling someone that a rental is not available even though it is, because of his or her protected class.
- Discriminating in the terms and conditions of rental because of a resident's protected class.
  Example: Sending violation notices to an Asian resident who breaks a rule, but not to a Caucasian resident who breaks the same rule.
- Charging additional deposits to families with children or to wheelchair users.
- Making, printing or publishing a notice, statement, or advertisement that indicates any preference, limitation, or discrimination based on a protected class.
  Example: Newspaper ad states "Apartment available for single person." Manager tells a Vietnamese applicant he'd be more comfortable in another community that has people like him.
- Failing to provide reasonable accommodations to a person with a disability, refusing to allow a disabled resident to make reasonable modifications, or failing to meet access requirements.
  Example: Refusing to let a blind resident live with a guide dog or not permitting a disabled person to install bathroom grab bars. Having an on-site leasing office that is inaccessible.
- Enforcing a neutral rule or policy that has a disproportionately adverse effect on a protected class, unless there is a valid business reason for the rule or policy, and the housing provider can show that there is no less discriminatory means of achieving the same result.

Example: Management has a rule that applicants must have an income of at least three times the monthly rent. Because people with Section 8 vouchers are low income, virtually all voucher holders would be denied tenancy under such a rule.

- Retaliating against a resident or applicant because he or she has asserted fair housing rights or has been a witness in a fair housing investigation.
  Example: Refusing to make prompt repairs because a resident filed a fair housing complaint.
- This applies for informal verbal complaints to management as well as formal discrimination cases filed with a civil rights agency. Even though the original allegation might turn out to be unfounded, if a housing provider takes retaliatory action, a retaliation complaint can be supported.
  Example: A resident complains of racial harassment. Then the manager issues a parking violation notice, but does not give notice to other residents for the same offense. The resident files a harassment and retaliation complaint. The civil rights office finds no evidence of harassment; however, the investigation shows that the manager retaliated against the resident for the harassment complaint by issuing the parking notice.

Screening Applicants

Housing providers have the right to determine if an applicant has the income and rental history necessary to be a good tenant. Be certain to screen applicants in a manner that complies with fair housing laws. It is best to have clear criteria for rental of a dwelling that does not take into account an applicant's protected class. Ensure that all employees involved in the rental process are familiar with and follow each policy consistently with all applicants.
Although consistency is important, some applicants may require special consideration:

- People with disabilities may need reasonable accommodations during the application and screening process.
- It's okay to refuse rental to individuals who have a history of criminal convictions.
- New immigrants to the U.S. can present challenging screening issues. There is a list of effective alternative documents that help determine whether these applicants meet rental criteria.

There may be cases where several applicants want the same rental, can we choose who we think is best, based on our experience?
While experience is invaluable, be careful not to take possible discriminatory actions based on unconscious biases. Some applicants look okay, then turn out to be bad residents, and a housing provider working on assumptions may not know that until after they sign a lease. A fair screening process that is applied equally to all applicants will get results that are more consistent and result in fewer fair housing complaints. If several applicants are interested in the same rental, it's best to screen them on a first-come, first-served basis, using objective criteria, and then offer the rental to the first qualified applicant. It helps to date and time-stamp applications. Pre-printed documents help to ensure that consistent information is gathered.

Reasonable Occupancy Standards Under the Federal Fair Housing Act

The Federal Fair Housing Act does not limit the applicability of any reasonable "Local, State or Federal" restrictions on the maximum number of occupants permitted to occupy a dwelling unit. According to HUD, this exemption is intended to allow "reasonable" governmental limitations on occupancy as long as such limitations are applied to all occupants, and do not operate to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin.

The preamble to HUD's final rule implementing the Fair Housing Amendments Act of 1988 provides some insight into the use of governmental occupancy standards. Although the Act specifically provides that nothing in the law limits the applicability of any reasonable "Federal" restrictions regarding the maximum number of occupants, HUD has determined that there is no support in statute or the legislative history of the Act which indicates any intent on the part of Congress to provide for the development of a national occupancy code.
HUD has further stated that, although HUD has developed occupancy guidelines for use by participants in HUD housing programs, these guidelines are designed to apply to only those types and size of dwellings in HUD programs. Therefore, these guidelines may not be reasonable for dwellings which have different available space and configurations than those dwellings found in HUD-assisted housing.

In HUD's rules, HUD states its opinion that there is no basis to conclude that Congress intended that an owner or manager of housing should be unable to restrict the number of occupants who could reside in that dwelling. Thus, HUD's rules permit, in appropriate circumstances, owners and managers to develop and implement "reasonable" occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms, and the overall size of the unit. HUD cautions, however, that HUD will carefully examine any such non-governmental restriction to determine whether it operates unreasonably to limit or exclude families with children, or discriminates against other protected classes of persons.

The most common rule of thumb quoted by HUD is two persons per bedroom or two persons per bedroom plus one. By limiting the number of occupants based on a number, the landlord could be accused of discriminating against families.

Housing Exemptions for Older Persons under Federal laws

The Fair Housing Amendments Act of 1988 prohibits discrimination against families with children. The 1988 Amendment exempts certain housing projects designed for senior citizens. A landlord must meet strict federal and state laws in order to be "senior housing." To maintain the senior housing exemption, a development must have 80% of the occupants be seniors and maintain the facility to meet the needs of seniors and disabled.

- **55-Years-of Age-or-Over Housing**

Housing projects that do not meet the age 62 exemption may qualify for the age 55 exemption. The prohibitions against discrimination based upon "familial status" do not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the 55-years-of-age-or over housing satisfies each of the following three requirements:

1. (a) The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons.
   (b) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons.
2. At least 80% of the units in the housing facility are OCCUPIED (not owned) by at least one person 55 years of age or older per unit, except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this section until 25% of the units in the facility are occupied.
3. The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate intent by the owner or manager to provide housing for persons 55 years of age or older.

- **62-Years-of-Age-or-Over Housing**

The prohibitions against discrimination based upon "familial status" do not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing will qualify for this 62 years of age and over exemption even though:

1. There are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
2. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over; and
3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

SITUATION: Madeline owns three duplexes in town. They are close to the stores, library and senior center. She decides they are perfect for retired folks and advertises them as such. She decided that they are "senior housing" and will only let seniors rent the units. Can Madeline just decide to have seniors only?

Washington State Landlord Tenant Law

Washington State has comprehensive Landlord Tenant laws located at RCW 59.18.

Exemptions from the Landlord Tenant Act

The following are exempted from the Act.

1. Institutions, public and private, where residence is incidental to detention or the provision of medical or similar services.
2. Occupancies under bona fide purchase money agreement or option to buy.
3. Transient lodging including hotels, motels, etc.
4. A family residence incidental to the lease of agricultural land.
5. Housing for seasonal agricultural employees.
6. A tenant who's right to occupancy is dependent upon his employment.
7. Space in a mobile home park.
8. Tenants who lease a single family dwelling for one year or more, who have had their attorney approve the exemption.
9. Property used for commercial purposes.

Responsibilities of a Landlord

In Washington State landlord a includes anyone designated as a representative of the "owner, lessor, sublessor," including but not limited to an agent, resident manager, or designated property manager.

Landlord's Duties include the following:

The landlord shall at all times keep the premises fit for human habitation.

1. Maintain the premises to substantially comply with all state and local statures and codes.
2. Maintain all structural components.
3. Keep any shared or common areas reasonably clean and safe.
4. Provide for the control of insects, rodents, and other pests, except in a single-family residence.
5. Make repairs when not attributed to normal wear and tear.
6. Provide the tenant with locks and keys.
7. Maintain all electrical, plumbing, heating and other facilities and appliances supplied by the landlord.
8. Maintain the dwelling in a reasonably weather tight condition.
9. Provide garbage cans and arrange for the regular removal of waste, except in the case of single family residences.
10. Provide facilities adequate to supply heat and water as reasonably required by the tenant.
11. Provide working smoke detection devices at move in, and a smoke alarm notice signed by both landlord and tenant.
12. Provide tenant with info on the health hazards of indoor mold and how to control growth.
13. The landlord and agents are immune from civil liability for failure to comply with #12 except where the landlord knowingly did not comply.
14. Provide the tenant written notice of the name and address of the person who is the landlord. Immediately notify the tenant by certified mail of any change of landlord.

    Designate an agent who resides in the county where the premises are located if the landlord resides out of state.

The Landlord shall not:

1. Intentionally shut off a tenant's utilities.
2. Lock out a tenant.
3. Confiscate a tenant's personal property.
4. Enter the premises with proper notice, except in an emergency
5. Attempt to physically remove a tenant from the premises.
6. Threaten a tenant with a firearm or other deadly weapon.
7. Attempt to evict a tenant who has been a victim of on-site threats or violence.
8. Rent property, which has been condemned or could be deemed unlawful to occupy due to code violations.

Responsibilities of a Tenant

The Tenant shall have the following duties:

1. Pay the rental amount at such times as required by the rental agreement.
2. Conform to all reasonable obligations or restrictions that are noted at initial occupancy or mutually agreed upon after property notice by the landlord.
3. Comply with all obligations imposed by municipal, county and state codes, statutes, ordinances, and regulation.
4. Keep the rental unit clean and sanitary.
5. Properly dispose of all waste and eliminate infestation caused by tenant.
6. Properly use all fixtures and appliances supplied by the landlord.
7. Leave the premises in as good a condition as it was at the beginning of the tenancy except normal wear and tear. Tenants are responsible for any damages they have caused.
8. Maintain the smoke detector, including battery replacement.
9. Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligation. The tenant shall not be charged for normal cleaning if the tenant has paid a nonrefundable cleaning fee.

The tenant shall not:

1. Intentionally and maliciously damage, destroy or remove any part of the structure, equipment, furniture or appliances, nor permit any other person to do so.
2. Permit a nuisance or destroy property.
3. Unreasonably withhold consent from the landlord to enter the dwelling unit within 24 or 48 hours of a written notice.
4. Engage in drug related activity or allow anyone else to engage in drug related activity at the rental property.
5. Engage in any activity on the rental property, which is:
    1. Hazardous to the physical safety of other persons
    2. Involves physical assaults upon another person which results in an arrest
    3. Involves the use of a deadly weapon, which results in an arrest.

Rental Agreements in Washington State

If the landlord collects money as a deposit, the Rental Agreement must be in writing. Both the Rental agreement and a written checklist detailing the cleanliness and condition must be signed and dated by the landlord or his agent and the tenant. A copy must be given to the tenant before the tenant moves into the unit.

Month to Month Tenancy

An oral or written agreement may establish a month to month tenancy, which continues indefinitely until either party terminates the agreement with proper written notice.

Lease

This is a contract for the tenant to occupy the rental unit for a specified period of time, during which rent will be paid. It must be in writing. The landlord and the tenant are bound to the terms of the lease during the period of the lease. The tenancy will terminate automatically at the end of the specified period of time.

Waiver of Rights

<u>The rental agreement between the landlord and the tenant cannot</u>

1. Force the tenant to waive any legal rights or remedies.
2. Allow the landlord to sue the tenant without notice.
3. Force the tenant to pay attorney's fees, except those fees authorized by law.
4. Allow the landlord to confiscate the tenant's property without a written agreement signed by the tenant.
5. Designate a particular arbitrator.

Rules of Tenancy

A landlord may change the rules of tenancy in a month to month tenancy by giving the tenant a written notice of the change at least 30 days before the end of the rental period.

Rent Increases

The landlord is required to give the tenant written notice at least 30 days prior to the end of the rental period of any increase in rent in a month to month tenancy.

Handling fees and deposits

Application Fee/Holding Deposit

1. Collection of a fee for a waiting list is illegal.
2. The landlord must provide an applicant with a receipt for any funds received to hold the unit and must provide a written statement of condition, if any, under which there will be a refund.
3. If the tenant does occupy the unit, the landlord must apply the holding deposit to the first month's rent or security deposit.
4. If the tenant does not occupy the unit, the landlord must process the deposit in accordance with the written statement provided to applicant at the time the deposit was made.
5. This holding deposit must not include any fee charged by the landlord to run an application check.

6. The landlord may charge the applicant for the actual cost of tenant screening process.
7. The landlord must provide the applicant with a written explanation of the screening process and the applicant's right to dispute the accuracy of the screening.

The Landlord Must:

1. The landlord must have a written rental agreement and a written checklist specifically describing the condition and cleanliness of or existing damages to the premises signed by the tenant in order to collect a deposit.
2. Describe all terms and conditions under which a deposit may be withheld.
3. Deposit all money received from the tenant in a trust account.
4. Give the tenant a written receipt for any money deposited with landlord. The receipt must indicate the location of the trust account. The tenant must be informed in writing of any change in the account's location.
5. Mail any money due the tenant from the deposit to the tenant within 14 days of the tenant vacating the rental unit. Any money withheld must be specifically accounted for to the tenant.
6. Not withhold a deposit for normal wear and tear resulting from ordinary use of the unit.
7. Refund the total deposit to the tenant, including reasonable attorney's fees, if landlord does not comply with these deposit requirements.

Deposit and Fees

1. Any non-refundable money paid to the landlord must be called a fee, and it must be clearly stated in the Rental Agreement that is it non-refundable.
2. A landlord may not take money in the form of a deposit and/or fee from a tenant without a written rental agreement.
3. A security deposit can be used to cover unpaid rent or damages.
4. A tenant cannot use the security deposit to pay last month's rent without **landlord** permission.
5. If any part of a deposit can be withheld as damages, it must be clearly stated as such in the Rental Agreement.

Eviction

Eviction procedures vary by state but the property procedure must be folloes. A tenant is usually evicted because of non payment of rent, unlawful use of the premises or non compliance with health or safety codes. Tenants can be given notice to leave within timelines according to rental contracts if the property is sold or to be renovated. Actual eviction is when the landlord files a suit for possession because the tenant breached the lease. Constructive eviction is when the landlord breaches the lease and the tenant must leave because it is uninhabitable.

Condominium Conversions

Both state and municipal laws govern condo conversions in the city of Seattle. State law entitles tenants to 120 days' notice in the case of condo conversion, and gives renters the right of first refusal to purchase the unit. Seattle also has a relocation requirement for condominium conversions, and requires that landlords inform tenants of the relocation assistance in writing with 120 days' notice. Households earning less than 80% of area median income will qualify for relocation assistance if they opt not to or cannot purchase and remain in their unit. Qualifying households will receive the equivalent of three months' rent in relocation assistance. Elderly renters or people with disabilities may receive some additional funds to help with moving costs. The developer must pay this relocation assistance by the date the tenants vacate the units. Brochure from the city… http://www.seattle.gov/dpd/publications/cam/cam602.pdf

Seattle Landlord Tenant laws

The city of Seattle has much stricter Landlord/ Tenant laws that landlords and property managers working in that area should be informed. The newest legislation to pass in Seattle is the First Come First Serve law.

First Come First Serve

Seattle City Council passed into law in summer 2016 a law requiring landlords in the city to rent their housing units to qualified applicants on a first-come, first-served basis. The goal is to ensure prospective renters are treated equally. The law was written to avoid having landlords pick one renter among multiple qualified applicants letting their own biases, conscious or unconscious, affect their decision.
The Seattle Office of Civil Rights (SOCR) will begin work on how to implement and enforce it and will launch a public-education campaign aimed at renters and landlords.

The law requires that before accepting a prospective renter's application materials, a landlord must provide the renter with information on the landlord's minimum screening criteria. When the landlord receives a completed application — in person, electronically or through the mail — the landlord will be required to make note of the date and time. The landlord will be required to screen multiple applications in the order in which they were received and make offers to qualified renters in that order. A prospective renter won't necessarily know her position in line, but she can ask SOCR to investigate by checking the landlord's records. Prospective renters will also have the option to sue a landlord when they think they've been skipped — an aspect of the policy that bothers landlord groups. There will be some exceptions. Landlords will be able to ignore the policy when renting to a specific vulnerable population, such as domestic-violence survivors.

When a prospective renter can show she needs extra time to complete an application — because she has a disability, for example — the policy will require a landlord to give her a spot in line based on the time and date of her extra-time request, rather than the date and time of her application.

The goal is to avoid discrimination. Sometimes landlords skip people of color, people with vouchers and families with children. They also might avoid potential tenants of a different race."

Tenant Relocation Assistance

The Tenant Relocation Assistance Ordinance was passed in 1990, and requires landlords to pay relocation money to low-income Seattle tenants who are displaced from their units because of housing demolition, substantial rehabilitation, change of use or removal of restrictions placed on subsidized housing. Tenants are entitled to 90 days' notice before they have to vacate the unit for one of these purposes. The owner must obtain permits in order to perform any of the actions listed above, and must first apply for tenant relocation licenses for residents impacted. Owners who fail to seek a relocation permit are not allowed to begin an eviction action against the tenants. Tenants are eligible for relocation assistance if their family income is less than 50% of area median income. The amount for relocation assistance changes from time to time, but can be up to $3,000. The landlord pays half and the city pays half.

The Manufactured/ Mobile Home Landlord Tenant Act

The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) RCW 59.20 governs the relationship between a landlord and a tenant who rents a mobile home space. It covers manufactured homes, mobile homes, park model homes, and recreational vehicles (RVs), if it is a primary home.
For the MHLTA to apply, both of these must be true:

- The tenant must own or be buying a type of home the MHLTA covers and use it as his/her main home.
- The tenant must live in a "mobile home park" or "manufactured housing community."

A park owner or manager (landlord) must offer a written rental agreement for a term of one year or more. The landlord must make sure tenant has signed a written rental agreement before moving into the mobile home park. If the landlord does not do this, the length of the rental agreement is automatically one year. It is against the law for the landlord to offer only a month-to-month rental agreement. But if a person signs such an agreement knowing a year rental agreement was possible, he may have given up the right to a year agreement.

The terms and conditions should be clear on the rental agreement. It limits the landlord's abilities to raise the rent, change park rules, or evict the owner.
If the landlord sells the park, all the rental agreements are still in effect. The park's new owner must honor them. The agreement must include:

- Park rules and regulations, including guest parking rules.
- Tenant signature and the landlord's. The landlord must clearly write his/her name and address.
- How much rent and all other charges must be paid, and when and where payments are due.
- The amount of any deposit and a description of circumstances that would allow the landlord to keep the deposit.
- A list of utilities, services, and facilities tenant may use during the tenancy, and an explanation of any fees the landlord will charge for their use.
- Tenant forwarding address, or contact info for someone likely to know how to get in touch with tenant.
- A description of the lot's boundaries.
- Future of the Park: the rental agreement must include a statement that the mobile home park will stay a mobile home park for three years OR it must state that the landlord may close the park at any time after notifying tenants. This statement must be in bold face type, directly above your signature on the agreement.

The agreement cannot include a provision:

- Allow the landlord to collect fees for short-term guest parking, if the guest is following parking rules. The landlord may charge long-term extended guests a parking fee **if** the rental agreement includes these fees.
- Allow the landlord to raise the rent during the term of the one-year rental agreement, or change the due date for rent. The landlord may make tenant pay a share of any tax or utility increase as long as the costs go down if taxes and utilities go down.
- Allow the landlord to charge for guests remaining on the premises fewer than fifteen days in any 60-day period. The owner may charge a fee when guests stay longer.
- Allow the landlord to tow or impound tenant or guest's vehicle without notice. The landlord can **only** tow a vehicle if s/he first gives notice.
- Allow the landlord to require tenant to give up your homestead rights or any other rights under the MHLTA.
- Allow the landlord to charge an entrance or exit fee. These include any charges to move in, move out, or transfer the lease. The landlord may only charge an entrance fee if you have a continuing care contract.
- Include any terms that result in tenant waiving (giving up) rights under the law.

The balance of the Mobile Home Landlord Tenant act covers everything from deposits, landlord and tenant responsibilities, repairs and eviction.

Section 3 Complete Quiz in Workbook

Section 4

Contract Law and Disclosure

This chapter on Contract Law is an overview of basic contract law, as well as, the contract law issues that all real estate agents face. . Every real estate transaction begins and ends with a contract prepared by real estate agents that is meant to be a meeting of the minds of all parties.

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

Section 4 Objectives

As a result of taking this chapter of the Washington Real Estate Law class the agent shall be able to:

- Know the definition of a contract
- Be aware of what constitutes a legal contract
- Understand terminating and modifying a contract
- Be able to know when a breach of contract occurs and the remedies
- Know offer and acceptance, multiple offers and fraud
- Know about listing agreements
- Know the Property Information Disclosure Law
- Understand Purchase and Sales agreements including notices, contingencies, addendums and inspections

Contract Definition

Real estate agents daily write and negotiate contracts. It is important to understand basic contract law as it applies to the practice of real estate. A real estate agent should not advise a client during the negotiation or after a contract is executed as to the clients legal rights under the contract. If there is any question it must be referred to the designated broker.

A real estate contract is a contract for the purchase/sale, exchange, lease, or other conveyance of real estate between parties. In its most basic issues to be enforceable the real estate contract must:

Identify the parties: The full name of the parties must be on the contract. In a sales contract, the parties are the seller(s) and buyer(s) of the real estate. If there are any real estate agents brokering the sale, they are typically listed also as the real estate brokers/agents who would earn the commission from the sale. In a lease/ rental the landlord, tenant and property manager, if applicable.

Identify the real estate (property): The full legal description, in order to be enforceable, must be on the contract.

Identify the purchase price: The amount of the sales price or a reasonably ascertainable figure must be on the contract.

Include signatures: A real estate contract must be entered into voluntarily (not by force), and must be signed by the parties, to be enforceable.

Have a legal purpose: The contract is void if it calls for illegal action.

Involve Competent parties: Mentally impaired, drugged persons, etc. cannot enter into a contract. Contracts in which at least one of the parties is a minor are voidable by the minor.

Reflect a meeting of the minds: Each side must be clear and agree as to the essential details, rights, and obligations of the contract.

Include Consideration: Consideration is something of value bargained for in exchange of the real estate. Money is the most common form of consideration, but other consideration of value, such as other property in exchange, or a promise to perform (i.e. a promise to pay) is also satisfactory. A real estate purchase and sale is a promise for a promise. Earnest money is not required as consideration.

NOTE: A real estate broker cannot determine whether a contract is valid, void, voidable or unenforceable. Contact the designated broker for any questions.

Contract Considerations

Express (parties have agreed) vs. **Implied** (inferred by conduct)	**Unilateral** (one promise) vs. **Bilateral** (two promises)	**Executory** (not fully performed) vs. **Executed** (fully performed)

An **express contract** is one that has been expressed in words. It can be spoken or written.
A purchase and sale agreement is an example of an express agreement.

An **implied contract** has not been put in words and is implied by the actions of the parties.
The seller left the woodpile after moving out so it is implied that the woodpile would belong to the new owner.

A **unilateral contract** includes one promise whereas a bilateral contract is where both parties have made promises.
A real estate purchase is a bilateral contract where the buyer agrees to pay and the seller agrees to sell.

An **executory contract** has not been fully performed.
A purchase and sale agreement that has just been signed and not been closed is an executory contract.

An **executed contract** is one where all parties have fulfilled their obligations.
When a transaction closes the purchase and sale agreement becomes an executed contract.

A contract is “executory” when it commences and “executed” when it is finalized.

Ingredients for a Valid Contract

Capacity	Mutual Consent	Consideration	Meet Lawful Purpose	Statute of Frauds

Capacity
To enter into a valid contract, a person must be at least 18 years old and be legally competent. This protects those who may not be able to fully understand the terms of the agreement. If a minor, for example, enters into a contract, only the minor can void the contract. If a minor has been emancipated, then the contract is valid. If a party signs a contract while drunk, they would need to show a defense why it should not be enforced.

What if a buyer signs a contract but is consuming alcohol? That person has the option to void the contract.
What if a seller signs a listing but appears to be quite elderly and have dementia symptoms? Take due diligence steps if you have suspicions but it is not your role to determine if they have dementia.

Mutual consent
All the parties to the contract must consent to its terms. It is achieved through offer and acceptance. The acceptance must not vary the offer's terms or it creates a counteroffer. Mutual agreement occurs when there is constructive delivery which includes delivery after a final signature agreeing to all terms is delivered to the other party, the other party's designated broker, the other party's agent or the firm of the other party.
When is a contract accepted? What about minor changes? What if only one spouse signs on a purchase and sale agreement when both hold title?

Consideration
The parties must exchange something of value. The consideration can be in the form of money or a promise. In the case of a purchase and sale agreement, it is a promise for a promise. A buyer promises to pay the seller money. The seller promises to transfer title and sell the property to the buyer. When they exchange promises they create an executory contract.

An earnest money amount is **NOT** required for a valid agreement. The real estate agent, no matter what is written on the agreement, does not make the decision in the case of a dispute over an earnest money if the sale fails. The dispute goes to interpleading in the courts.
What if the buyer's agent does not bring a check for earnest money when the offer is presented? Is it a legal contract.. maybe… but it is not for the agent to decide!

Lawful purpose
The purpose of the contract must be lawful at the time it is made. In other words, if a contract is fraudulent it is not valid. Any contract that contains provisions that are not legal or a contract without written provisions that are key to the transaction may not be valid. Check to see if the "seller" is the owner of the property as recorded on the last deed before listing a property. The "seller" or person signing the purchase and sale agreement could actually only be the tenant!
What if there is fraud involved? What if the parties are NOT who they say they are?

Statute of frauds
This refers to the provisions of the Washington State Code that requires real estate contracts to be in writing and be signed. This is to prevent fraudulent claims and to ensure that the agreement between the parties is clearly expressed.

The statute of frauds applies to any agreement that is for the purchase or sale of real estate. It also applies to any agreement that authorizes an agent to sell or purchase real estate for compensation or a commission. Listing agreements must be in writing in order to enforce the payment of a commission, for example. It does not apply to a commission splitting agreement between two brokerages. An oral referral to a cooperating agent could be a valid contract but not necessarily. Don't make assumptions. Put all contracts and agreements in writing!

The statute of frauds does not require any specific contract or formal document. It can even be a note that is clearly written and signed.

There are times in real estate sales where agents get agreements from clients over the phone. What is the problem with these verbal agreements? They can range from closing date to a verbal counter offer. They are not considered valid, enforceable contracts.

Legal Status of Contracts

Valid	**Void**	**Voidable**	**Unenforceable**
Binding and enforceable	No legal contract exists	Can be voided by one party	Parties can complete but it is unenforceable

A **valid contract** is one that meets all the legal requirements for a contract. The contract is binding and enforceable.

A contract that is **void** does not meet one or more of the requirements for a contract. It is essentially "not" a contract. It cannot be enforceable in court. If both parties fulfill their obligations under the contract it can be executed. But a void contract is no contract in the eyes of the courts.

A **voidable contract** is one that one of the parties can disaffirm or void the contract. Only the injured party can choose whether or not to go through with the contract. So the contract is executory until and only if the injured party decides to disaffirm the contract.

An **unenforceable contract** happens when all the requirements for a contract are met but there isn't evidence to prove something in a court, it is poorly worded, or the contract is for some unlawful purpose.

If a contract is written to create a fraudulent transaction, is it still valid? Is it void?

Remember… The real estate agent is not licensed to examine and give advice on contracts as to whether they are legal and binding. All questions regarding a contract you write as to whether it is void or voidable or even unenforceable must be referred to your designated broker!

Terminating and Modifying a Contract

Full Performance Contract is executed	**Agreement Between the Parties** Parties both agree	**Assignment** Transfer of rights or duties to third party	**Novation** Substitution of a new contract	**Accord and Satisfaction** A new agreement between parties	**Release** An agreement to release terms

A contract is terminated in a number of ways. If a contract is executed and there is **full performance** by all parties, the contract is terminated.

Both parties can **agree** to terminate the contract. There may be remedies for one or all parties.

When a contract is **assigned** and the rights are transferred to another party, the question becomes who then is obliged under the contract? This right can be limited by the contract itself with a term that specifies that one party cannot assign it without the other party's consent. The assignor may not be relieved of all liability under the contract. If the person that the contract was assigned to does not complete his obligations, the assignor can be considered liable.

When there is a substitution of another contract, this is called a **novation**. When a contract is changed so that it is essentially a new contract it substitutes one contract for another. It could change the parties or the actual terms of the agreement.

If both parties agree to something other than what the contract was written for it is called **accord and satisfaction**.

If one party grants the other party a **release** from the terms of the contract the obligation can be eliminated. If the contract was required to be in writing according to the statute of frauds, then the release must also be in writing.

A purchase and sale agreement is terminated when the transaction is closed. A listing agreement is also terminated when the terms are met and there is a sale that closed.

In a real estate transaction, there are times that the parties agree to terminate a contract. So that all parties are in agreement, a rescission would be signed. This brings the parties back to the place they were prior to the contract. If the parties agree, there may be remedies that were agreed to in the rescission.

Remedies for Breach of Contract

Rescission *Parties put back in original position*	**Liquidated Damages** Damages agreed to in the contract	**Actual Damages** The amount of money actually lost	**Specific Performance** Court forces party to complete the agreement

If one party fails to perform or breaches the contract, the other is not required to carry out his/her part of the agreement.

One party breaches a contract by not fulfilling their end of the agreement. The other party can use the courts to deal with the damages incurred. Dispute resolution occurs in arbitration or the court system. Many contracts have clauses that spell out the process in arbitration. If one party sues the other and it is filed in the court, there are time limits.

In Washington State, a lawsuit based on a written contact must be filed within six years after the breach occurred. An action based on an oral contract generally has a 3 year limitation.

When there is a breach, there are four basic remedies.

- **Rescission** is where both parties are put back in the original position and there are no claimed losses. They both walk away. Both agree it is a dead deal and the house goes back on the market and the buyer moves on, for example.

- **Liquidated damages** are those agreed to in the contract. An example might be an agreement that specifies a certain dollar amount should one party breach the contract. The earnest money could be the liquidated damages, for example.

- **Actual damages** are those when a contract is breached and one party incurs damages as a result, that party may claim that amount of money lost. There might have been a cost that incurred that might have to be covered, for example.

- **Specific performance** when a court can sometimes force a party to complete the agreement called for in the contract. A court might force the builder to sell to the buyer even though it might sell to another one for more, for example.

An agent should never determine, consult, or give any advice or prediction about damages if a contract is breached! This is where the designated broker and attorney get involved.

Offer and Acceptance of a Contract

In order for a contract to be binding, all parties must consent to the terms which must be a meeting of the minds. This is referred to as offer and acceptance.

Offer

Executing a contract begins when one person makes an offer. The offer must express a serious objective intent to contract, and have definite terms.
The offer is not legally binding until it is accepted by the offeree. It can be accepted any time before it terminates.

For example, when a real estate agent presents an offer, the seller is not bound by the offer until there is mutual agreement. The seller can agree any time before the offer terminates. The offer terminates in one of the following ways:

Lapse of time. Most offers have an expiration date. It can terminate prior to that date because of other reasons.

A seller may delay the acceptance of a sale hoping for a better offer. The first offer is terminated at the expiration date and any agreement between the parties would have to become a new offer.

Revocation. If the offeror revokes the offer prior to it's acceptance, the offer is terminated.

A *buyer might find a better house and decide to revoke the offer on the first house. As long as the seller has not signed the original offer with no changes, the offer terminates.*

Rejection. If the offeree rejects the offer then the offer terminates.

A seller may accept another offer and reject the first offer. At that time the first offer is terminated.

Death or incapacity. If one of the parties dies or is not competent prior to acceptance, the offer is terminated.

If the seller passes away while the house is on the market and offers are submitted, the offers are terminated. The buyer is not obligated if it has not been accepted.

Acceptance

When an offer is accepted, a contract is formed. There are four basic requirements for acceptance. The acceptance must:

- Be **accepted** only by the offeree
  Only the Buyer can accept the offer that the buyer signed. (No one else can accept for a buyer without a power of attorney.)
- Be **communicated** to the offeror
  When the seller signs an offer, the acceptance must be communicated to the buyer.
- Be made in the manner specified which includes **signature** of the parties.
  Only a signed written acceptance is evidence. The seller would have to sign the offer.
- Not vary from the **original terms** of the offer.
  One party cannot change terms unless the other party agrees in writing. Once the terms are changed, it becomes a new offer.

Acceptance of an offer must be considered mutual acceptance and be communicated to the offeror. If a seller accepts a buyers offer on a property by signing the purchase and sale agreement as written within the time frame but does not communicate that acceptance to the buyer, it can still be revoked by the buyer.

Counteroffers occur when there are changes to the original offer. When a party makes a change, it effectively terminates the old contract and becomes a new contract. Once that occurs, the seller, for example cannot go back and accept the previous offer from a buyer because the original one has been terminated when the seller made a counteroffer. Each counteroffer terminates the previous offer and becomes a new offer subject to the legal requirements for acceptance.
Real estate brokers must be hesitant to give contract advice and refer questions to the designated broker, corporate attorney or refer clients to their attorney.

Multiple offers

If another offer is presented, it is imperative that if the seller signs the second offer, it must be after withdrawing the first offer. The second offer should read, "subject to the failure of the first offer" to make sure that there is no issue with the first offer being terminated. Too often sellers sign a second offer without withdrawing the counter on the first offer. Therefore, sellers have sold their property to more than one party.

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

- The seller can choose just one offer at that time, even if it is not the highest price.

  But, the seller CANNOT choose an offer over another because of the description of the buyers. For example, the seller cannot choose the single man over the mixed race couple. Another example would be choosing the "perfect" family over another gay buyer. Offers must be chosen based on the offer…. NOT the people according to Federal and state discrimination laws.
- The seller can reject all offers.
- The seller can counter offer on more than one offer. But the risk is at the property may end be being sold to more than one buyer. Many attorneys and brokers advise against this or creating a "race to the finish."

When representing a buyer in a multiple offer situation it is important to structure the offer so that the buyers have their "best foot forward."

There are a number of situations where the buyers can sign "escalation clauses." These agreements basically say that they will match or go a certain dollar figure higher than the highest offer. This would encourage the seller to choose that offer due to the fact it would be the highest. It gets more complicated when there are a number of offers with similar clauses. Sometimes the clauses have limits as to the highest amount the buyer will pay. Often they require a copy of the second highest offer.

All offers must be presented to the seller even if there is a pending offer on the property according to the Law of Agency RCW 18.86. The seller has the right to evaluate all offers even though they have a firm contract on the property because:

The first offer may fail.
The second offer may have terms that are more favorable and the seller may offer the first buyers a remedy if they decide to terminate.
The seller should be able to see the date and time of the offers to make sure that they had full knowledge of offers before signing.

Consent Must be Freely Given

In order for a contract to be binding, there must be consent freely given. Consent must **NOT** be as a result of:

Fraud
A victim of fraud would have to have entered into the contract using false information. Fraud could be considered **actual**, for example, when a seller does not disclose truthfully about a defect in the property. Or, fraud can be **constructive** when there maybe errors in disclosure that were not intentional.

Fraud in the **inducement** occurs when a party understands what is being signed but the party is being defrauded signing something that is not what was expected.

A seller might be pressured to sign an agreement to sell her house for much lower than the actual market value. The seller is aware that it is a contract to sell the house, but the agent had her rely on a fraudulent appraisal.

Fraud in the execution occurs when the party does not know what is being signed or that there is a contract.

A seller might think that the papers being signed are to refinance the house, when in fact, there is a quit claim deed included in the documents.

Undue Influence
Taking advantage of someone because of some affinity relationship can cause undue influence. Someone that is easily coerced because of age, drugs, or financial desperation could be pressured into signing contracts that are fraudulent. Often there is a sense of urgency to sign immediately. The contract is voidable by the injured party.

A homeowner might be facing foreclosure and sign multiple contracts because of pressure from a foreclosure rescue scam artist.

A senior who is pressured to sign documents by an elder in the church that give him/her control over her property.

Duress
Duress occurs when someone is threatened to sign contracts that they would not otherwise sign. They might be threatened with harm or public humiliation, for example, so they sign the contract. The contract would be voidable

A distressed homeowner might sign a contract with a scam artist to avoid being on a published foreclosure list for relatives and friends to see.

Mistake
Mutual mistake does not usually involve any bad faith. If both parties are mistaken about some fact in the contract, either of them may disaffirm the contract.

Real Estate Listing Agreements

Real estate agents use listing agreements to spell out the services that the agent will perform in exchange for payment of commission. In order for an agent to sue for commission, the agreement must be in writing and signed according to the statute of frauds. A listing agreement is basically an employment contract between the real estate firm and the seller. The real estate agent executes the contract on behalf of the firm. The real estate agent typically has a contract with the firm for the payment of commissions.

Most real estate agents in Washington State use preprinted forms provided by a local MLS and attorney. The most common contract is an **Exclusive Right to Sell**. This agreement states that the owner will list with one broker exclusively and owes commission to that broker's firm regardless who sells it during the term of the listing including another broker or if the seller finds a buyer.

An **Exclusive Agency Agreement** gives the seller the right to sell the property without paying the listing company commission. This is not common and some MLS do not offer that.

An **Open Listing** is often not a listing at all. The owner just tells the agent that she will pay commission if the agent finds a buyer. Often this is not in writing and not enforceable.

The most common elements in a listing agreement include:

- **The property description**. The listing should include the full legal description because a street address does adequately describe property. The property might have easements, storage, acreage, etc.. that are not included in the address.
- **Full names of the and signatures of all owners or signatories.** The seller must sign the listing agreement. If there is another signatory, the documentation must verify that the person has the authority to sign. A power of attorney may not be adequate and should be verified by escrow.
- **Sales price and terms**. The agreement lists the price and terms the seller agrees to pay commission if a buyer is accepted.
- **Agency disclosures**. The listing form defines the agency relationship should the firm or listing broker sell the property. The listing agent must provide the sellers with a copy of the Law of Agency brochure according to RCW 18.86
- **Access to the property**. The lock box and authorizations. If that is not available, then access should be described.
- **Multiple listing**. The firm and the obligations and responsibilities with the MLS
- **Marketing**. The firm has the right to market the property.
- **Hold Harmless**. The seller is required (unless exempt) to provide a disclosure statement and the firm is not liable for claims regarding the disclosure
- **Firm Damages**. Should the seller receive compensation from a buyer's breach, the seller is to pay damages, if any. To the listing firm.
- **Commission**. The listing agreement states the terms when the seller owes commission including extender clause.

Property Information Disclosure

The Washington State Disclosure Law

Most lawsuits against brokers are in the area of misrepresentation. The majority are based on water problems including storm water runoff, leaking basements, failed roofs, or leaky pipes, Siding problems, adequate water supply and mold. For facts that are not asked on the form, the seller can attach additional pages.

The Property Information Disclosure is a Washington State law RCW 64.04. The sellers fill out the form. The buyer can waive the right to receive one. There are some sellers that are exempt. The Disclosure Law Form deals strictly with the structure of the property itself. Agents are NOT to fill out the form. The law specifies what is required on the form. The property information disclosure statement clearly says that it is "not considered part of any written agreement between the buyer and the seller of residential property." RCW 64.06.020(3) The disclosure form is for disclosure only.

A seller must fill out the environmental portion of the Seller Disclosure form if there is a "yes" answer to an environmental question.

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

The liability for inaccurate disclosure by the seller has been fought in the courts. The buyer should definitely not rely on the form when making decisions to purchase. It is important for a buyer to get a thorough home inspection and anything that arises as a concern should be investigated further.

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

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

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

If you happen upon a prospective listing whereby there was a "negative stigma" that could affect a buyer's decision to buy, contact your designated broker.

The disclosure law also restricts the seller's liability. "The seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor." RCW 64.06.050(1)

Lead Paint Disclosure

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

The Washington State Department of Commerce has begun enforcing new rules aimed at protecting children from poisoning by lead-based paint. The State is focused on training and education for contractors so they may apply the new nationwide rules for lead-safe work practices. Washington State's efforts include reducing the cost of lead-safe certification to $50.

Washington is the 11th state, and the nation's second largest state (by population), to begin management of the Environmental Protection Agency's Renovation, Repair and Painting Rule. This new rule requires maintenance and construction professionals to use lead-safe work practices when conducting painting, renovation, and repair work in schools, child-care facilities, and homes that were built before 1978. Most buildings constructed before 1978 contain lead paint. Prior to this rule, lead-safe practices only applied to designated lead-abatement projects.

Mold Disclosure

In 2005 Washington State passed a law that requires Landlords to provide documentation and disclosure warning tenants of "the health hazards associated with exposure to indoor mold." This information must either be given to the tenants individually or posted in a public area. It is important that this information is disclosed to you prior to you signing your lease, as it is the obligation of the landlord to do so. However, there are no specific requirements of the landlord to test or remove toxic mold.

Furthermore, it is required that the landlord maintain a residence that is "fit for human habitation," and in accordance with existing health codes or ordinances established for the State of Washington. It is also the responsibility of the landlord to maintain the structural integrity of the building and that the "dwelling unit [is] in reasonably weather-tight condition."

Carbon Monoxide

In 2010, the Washington State building code council adopted rules requiring that all buildings classified as residential occupancies, as defined in the state building code in chapter 51-54 WAC, but excluding owner-occupied single-family residences legally occupied before July 26, 2009, be equipped with carbon monoxide alarms. However, for any owner-occupied single-family residence that is sold on or after July 26, 2009, the seller must equip the residence with carbon monoxide alarms in accordance with the requirements of the state building code before the buyer or any other person may legally occupy the residence following such sale. Real estate Brokers shall not be liable in any civil, administrative, or other proceeding for the failure of any seller or other property owner to comply with the requirements of this section or rules adopted by the building code council.

Real Estate Purchase and Sale Agreements

When a buyer offers to purchase property, the contract is commonly referred to as a purchase and sale agreement. Contracts can be legally binding once signed. The decision to purchase real estate is one of the most major ones in our lives. As agents, we are used to dealing with contracts and we often forget the pressure on the purchasers when they sign the bottom line or "approve the paperwork."

The first time your purchasers see and read the purchase and sale agreement should not be the moment you have been waiting for when they make the offer! Pull out the contracts and discuss them at the first meeting you have with the purchasers. If you make the assumption that the purchasers understand the agreement because they purchased in the past, you may be making a mistake. Think about how many changes the contracts have gone through in the last year. It is hard for even real estate agents to keep up with the all the changes.

Ten Critical Elements on a Purchase and Sale Agreement

1. The **complete names** of all parties. The buyers can check how they will take title. Make sure there is no question as to whether they are competent. You should not ask about their marital status, for example. You should ask, "How do you take title?" If they are unsure, let that be handled in escrow. A married couple could have one take title as sole and separate property or as community property, for example.

2. The complete **legal description**. If it is attached at the time of signing it does not necessarily have to be initialed because that is not always possible in the case of bank sales, for example. The contract must have a FULL legal description to be valid! An address might show where the mail is delivered. The number on the front door might help the fire department. But, the legal description includes the size and easements that describe the real property.

3. The amount of **earnest money**. A clear date should be specified if not to be deposited upon acceptance. It is NOT required for a valid agreement.

4. The **purchase price** must be clear and concise. If it includes any terms they must be specified.

5. The size of the **down payment** and how the remainder of the purchase will be financed. The **financing contingency** must include dates and terms. If the sale is seller financed, the forms are required to be attached.

6. Any items of **personal property** to be included. Appliances or furniture, for example, must be added to the contract under included items.

7. The **agency disclosure** clause must be a part to the contract. The listing agent states which parties she is representing in the transaction. When there is a selling agent, he/she also must indicate the party represented.

8. The **dates** for closing, contingencies and notices and the terms required to fulfill obligations. There may be a number of inspections required as part of the contract including structural, pest or septic. The terms and dates must be clear.

9. The length of **time** the offer is valid. The offer is valid until it expires or is revoked.

10. The **signature** of all buyers and initials on all changes on the contract.

Addendums

The MLS has well over 100 forms to use to use to sell real estate.

The second you start filling out a blank addendum you COULD be in a situation where you are "practicing law." The Heritage House case many years ago gave us, as agents, the ability to fill out preprinted forms for a real estate purchase and sale.

"The licensee can complete simple printed standardized real estate forms, which forms must be approved by a lawyer. It is being understood that these forms shall not be used for other than simple real estate transactions which arise in the usual course of the broker or salesperson and without charge for the service of completing the forms."

But, once we start drafting our own forms or contracts we are doing the job of an attorney which is called "practicing law."

There can so much ambiguity with the addendum itself or with the rest of the contract. It is difficult to find a blank addendum than an agent created that doesn't have some sort of "loophole" embedded in it.

There can be challenges writing addendum's that cover an issue as common as a buyers walk through. For example, these phrases are often used and are not well defined.

- Workmanlike manner
- Buyers satisfaction
- Prior to closing
- Buyer to have an inspection of the roof

The buyer or the seller may not agree on the meaning of a phrase as in this circumstance and a bit of wrestling can ensue!

Identify the risk when writing an addendum.

It is best to recommend action rather than inaction or terminating the contract. Spell out the action, the time frame, and the consequences if the action is taken or not approved.

Try to use only the preprinted forms available from the MLS or your corporate forms. There are hundreds of forms created to address most of the issues we deal with when negotiating a transaction.

Notices

Throughout a real estate transaction there are requirements for one party to give notice to another party that condition has been met or waived. Performance or further agreement is based on new information.

Examples of notices that are commonly given from one party to another include:

- Removal of contingency for sale of home
- Inspections
- Review of Resale Certificate
- Review of property disclosure form
- Financing contingency
- Revocation or offer or counteroffers

All notices required or permitted in, or related to, the Purchase and Sale Agreement must be in writing unless specified otherwise. If notice is not given, the the contract may be terminated. There may be a consequence if notice is not given in a timely manner.

The purchase and sale agreement states the notice can be signed by at least one party in the case of a husband and wife. Experience has shown many agents that it is best to get both signatures to be on the safe side.

An agent writes, "This is NOTICE that the closing date shall be extended one week to June 7th. This is a change to the terms of a contract and not a "notice." A notice includes terms that are already agreed upon. A notice is like a fork in a road. The parties know that they are traveling down a certain road and at a certain time due to some certain event, one party will choose one of the forks in the road. When they make the choice they give "notice" to the other party

Receipt of Notices

Receipt of notices to the buyer can be by the selling licensee or the licensed office of the selling licensee or by the seller by the listing agent or the licensed office of the listing agent. According to the Purchase and Sale Agreement, receipt by the Selling licensee of a Real Property Disclosure Statement, Public Offering Statement and/or Resale Certificate shall be deemed receipt by the buyer. The Selling Licensee and Listing Agent have no responsibility to advise of a receipt of a notice beyond either phoning the party or causing a copy of the notice to be delivered to the party's address shown on this agreement. Buyer and seller must keep agents advised of their whereabouts in order to receive prompt notification of a receipt of a notice.

It is recommended when writing a contract whereby a party has to complete some performance it is usually recommended that action be required instead of action to terminate the contract.

Contingencies

Contracts often include one or more conditions or contingency clauses. It makes the promisors obligation depend on the occurrence of a particular issue. If that is not to their standards according to what is written in the contract, the promisor can withdraw without liability for breaching the contract. When there is a contingency, the promisor must make a good faith effort to fulfill the requirements. It cannot be used as an "out" clause to get out of the contract. A contingency can be waived by the party that it was intended to benefit with the consent of both parties.

Contingencies can be wide ranging. They can include but are not limited to:

- Structural inspection
- Financing
- Pest inspection
- Septic or well inspection
- Water quality test
- Environmental hazards such as Lead, asbestos, carbon monoxide
- Plumbing inspection
- Roof inspection
- Date funds available
- Sale of buyers home

Contingent on the sale of buyers home.
In some cases, the purchaser cannot complete the sale without the proceeds from the sale of another property. In these cases, the buyer often gives the seller information on the property. The seller will give the buyer a time frame to complete the sale.

Bump Clauses
When a sale is contingent on the sale of another property there is often a bump clause included in the contract. If the seller receives another offer during the contingency time period, the seller can demand that the buyer waive the condition or cancel the contract.

Inspections

Inspection addendums are the biggest opening to terminating a contract or causing the terms to possibly substantially change. Because the purchase of property is often the largest investment an individual will ever make in their life, the condition of the property is most important.

There are a number of inspections that a buyer can choose to have done on a property. They can include but are not limited to:

Structural or home inspection, pest inspection, lead paint, water quality, septic, well, asbestos, roof, etc.

If the property is served with a septic or a week, check the county and city regulations regarding testing and pumping.

It is important to use the forms provided by the MLS for inspections. When an agent writes up a blank addendum for an inspection there are too many unanswered questions and performance for the contingency is not clearly defined.

For example, if an agent writes on a blank addendum the following:

"Inspection of plumbing and electrical systems, paid for by purchaser and inspection of heating system."

There are a number of questions regarding the performance on the contingency.

What is the time frame to satisfy the inspection?
Who pays for the inspection of the heating system in view of the way the condition is expressed?
Inspection by whom? A qualified plumber, electrician, a general contractor, a city inspector?
Is it merely the fact of inspection which satisfies the condition?
Must the inspection disclose conditions which are satisfactory to this buyer or to a reasonable, objective buyer?
If the inspection discloses a minor defect which can be quickly remedied, does the seller have the option to so remedy?
If inspection discloses a major defect, can the seller remedy?
If inspection discloses a defect, can the buyer walk from the transaction and rescind the contract?
Must the corrected system also be inspected to the satisfaction of the buyer?

Washington State passed the Home Inspector Act. According to RCW 18.280 a home inspector must be licensed. If not licensed before 2009, a home inspector must complete a 120 hour Home Inspector course and have 40 hours of mentoring. Then the home inspector must pass the exam before applying for a license. In addition, many home inspectors have a Pest inspection license. Make sure that the home inspector your buyer has chosen has a license.

If there is anything that is identified as a problem or a potential problem with the property, the real estate agent should suggest that the buyer take a second look which may include getting a re-inspect or another inspector.

An inspector who is going to inspect for or remove lead based paint must either pass the Renovator's Lead-Based Paint Training Course or a Safe Work Practices Training Course approved by HUD.

Buyer Beware

The seller is required, unless exempt, to fill out a property information disclosure and provide it to the buyer. Most buyers assume that the seller has disclosed accurately and completely. This is not always the case. But, though sellers can actually be found fraudulent concealing information, the law still leans toward "buyer beware." A buyer needs to have inspections and check out the property to the best of his/her ability with professional inspectors.

This case demonstrates how the buyer cannot just rely on the fact that the property information was incorrect but that the buyer needed to do more due diligence… to beware… inspect… and to question.

Douglas v. Visser.

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

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

The Court of Appeals reversed the trial judge's decision and sent the case back for the trial judge to dismiss the claim and award the seller attorney fees. Once the buyers were aware of some rot at the house, they were required to investigate further. It did not matter that the discovered rot was minor and in a different location. According to the decision, the buyers did not have a duty to make an exhaustive invasive inspection or endlessly ask further questions. They merely had to make further inquiries after discovering the rot or at trial show that further inquiries would have been fruitless. The buyers could not get relief by asserting that the defect was worse than anticipated.

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

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

A buyer should assume that there is no real remedy for any misrepresentations by the seller. The buyer has a duty to follow up on every defect that is found and every uncertainty about the property. If the buyer could have discovered the truth with diligence, the buyer will have no claim. The Property Information Disclosure form, even if it contains errors, cannot support any claim for damages against the seller.

Referring Third Party Vendors

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

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

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

Multiple Offers

In an active market a seller can often have more than one offer. There are no laws or rules from the Department of Licensing that specifically deal with multiple offers.

According to the preliminary data from Redfin December 2013, approximately 40% of all offers in Seattle had competition published on the internet. . According to the Puget Sound Business Journal in October 2013 using Redfin data, about 57% of Seattle homes had multiple offers. Redfin data showed that in Seattle about 13% of the winning offers were all cash and 11% waived the financing condition. The Housing Market Snapshot from the Runstad Center shows that 28,980 resale homes sold in the third quarter of 2013 which is approximately 25% higher than a year ago.

Many MLS' and real estate firms have created forms to deal with multiple offers.

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

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

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

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

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

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

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

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

For buyers making an offer that might face competition it is important to come in with a strong contract. Buyers should consider that the following will help their position when a seller is debating on which offer to accept.
Buyers should consider that to get their offer accepted the following might help.

- The ability to move and respond quickly to any inquiry.
- Make your highest offer. Learn as much about the market.
- A pre-approved loan with a known local reliable lender.
- A decent down payment when qualifying for the loan.
- A pre-inspection report or have an inspector that will complete the inspection in a short time.
- Make the offer clean with few contingencies.
- A serious earnest money amount.
- Trust your real estate agent.

Make sure you are using the latest forms from the MLS and you are well versed on any policies your office might have.

Section 4 Complete Quiz in Workbook

Section 5

Anti-Discrimination Laws and ADA

This chapter on Fair Housing and Anti-Discrimination is an overview of the Federal Fair Housing Laws and the Washington State Law on Discrimination. If you have legal questions, these must be directed to your Designated Broker or the corporate attorney.

Section 5 Objectives

As a result of taking this chapter of the Washington Real Estate Law class the agent shall be able to:

- Know the origin of the Federal Laws against discrimination
- Identify the protected classes under the Federal Fair Housing Act
- Know the major provisions of the Washington State Anti Discrimination Law
- Be aware of fair housing cases
- Identify how the American Disabilities Act open doors to people with disabilities.

Federal Fair Housing Act

The Laws are Clear… You are not to Discriminate!

Real Estate brokers, Property Managers, Landlords AND sellers cannot discriminate based on a protected class.
EVERY person reading this is a member of protected classes because you all can be defined by race, color, religion, sex, national origin, familial status … and maybe handicap.

Does the seller have the right to choose one buyer over another? Let's say that the sellers would love to have a little family live in the house where the sellers raised their children. Is it legal for the sellers to choose the little family over a single white divorced man? What if the sellers would prefer to sell to a family that emigrated from the same country instead of a gay married couple? Do the sellers have the right to choose the people that buy?
The answer is NO! The sellers do not have the right to choose the buyers because of their race color, religion, sex national origin, familial status or handicap under Federal laws. In addition, states and local communities have gone farther to protect people from discrimination by adding protected classes including sexual orientation, gender identity, and political ideology. Check your community. But, most importantly… don't discriminate!

When a buyer buys a property, the buyer purchases a bundle of rights and a bag of restrictions. The owner of a property cannot decide to board horses in the backyard of a city lot or add an additional 3 stories to a home in a suburban neighborhood. The owner may not be able to paint the house purple or avoid mowing the grass. The restrictions can include everything from paint to business. The restrictions can come from Federal State and local laws. In addition, there are fire codes, homeowner association rules and building codes. The same is true for discrimination. The seller does not have the right under Federal, State and Local laws to discriminate when negotiating or selling their house.

About 150 years Ago the first Anti Discrimination Law Passed

The U.S. Supreme Court rendered its decision in Jones v. Alfred H. Mayer Co., and held that the Civil Rights Act of 1866 banned private, as well as government, racial discrimination in housing. Thus, the 1866 Act was given new life, and could be used to fight racial discrimination.

In 1896, the Supreme Court decision Plessy v Ferguson established the separate but equal doctrine that was followed in many parts of the country. Anyone who wasn't white was "colored" and the "Jim Crow" laws allowed separate accommodations for restaurants, water fountains, hotels, etc. These laws were legal until the Federal Fair Housing Act passed.

The Fair Housing Act passed in the 1968, outlaws a variety of private discriminatory acts, including refusal to rent or sell, discrimination in the terms of sale or rental, blockbusting, and discrimination in advertising and in the use of real estate services. The protected classes include:

Race	Religion	National origin	Handicap	Color	Sex	Familial Status

In 1974, the Fair Housing Act was expanded to include prohibition of gender discrimination, and Section 8 programs were created
In the 1970's, various federal legislation was enacted to prohibit discrimination in federal programs, and to include additional protected classes. Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against handicapped persons.
Later, Congress enacted the Age Discrimination Act of 1975, which prohibited discrimination on the basis of age in programs receiving federal financial assistance. In 1980, President Carter expanded Kennedy's executive order to include gender-based discrimination, and to grant HUD additional authority to issue regulations to further fair housing in federal programs.

The 1988 Amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the act. The 1988 Amendment made major changes to Title VIII, including adding two protected classes to the Fair Housing Act: (1) families with children and (2) handicapped persons. The Amendment also modified the administrative process for HUD complaints, and essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act. The Amendment removed the cap on punitive damages and increased the available damages and civil penalties. The Amendment also extends Title VIII to other discriminatory practices, relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

The Housing for Older Persons Act of 1995 (HOPA) makes several changes to the 55 and older exemption. Since the 1988 Amendments, the Fair Housing Act has exempted from its familial status provisions properties that satisfy the Act's 55 and older housing condition.
First, it eliminates the requirement that 55 and older housing have significant facilities and services designed for the elderly. Second, HOPA establishes "a good faith" reliance immunity from damages for persons who in good faith believe that the 55 and older exemption applies to a particular property, if they do not actually know that the property is not eligible for the exemption and if the property has formally stated in writing that it qualifies for the exemption.

HOPA retains the requirement that senior housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. It also still requires that senior housing publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older. An exempt property will not violate the Fair Housing Act if it includes families with children, but it does not have to do so. Of course, the property must meet the Act's requirements that at least 80 percent of its occupied units have at least one occupant who is 55 or older, and that it publish and follow policies and procedures that demonstrate "an intent" to be 55 and older housing. A Department of Housing and Urban Development rule published in the April 2, 1999, Federal Register implements the Housing for Older Persons Act of 1995, and explains in detail those provisions of the Fair Housing Act that pertain to senior housing.

Note, that senior housing developments must have 80% of units "occupied" and not owned by seniors.

Summary of Prohibited Acts under the Federal Fair Housing Act

1. Any refusal to sell or rent, or otherwise make unavailable, a dwelling after receiving a bona fide offer, or refuse to negotiate for the sale or rental of a dwelling, because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.

2. Discriminating in the "terms, conditions, privileges, or services of the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

3. Engaging in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

4. Make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. This advertising prohibition applies to private owners who may otherwise be exempt from the Act.

5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

6. Engaging in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

7. Denying access to, or participation in a multiple listing service, brokers association or other organization to the business of selling or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin. This also includes creating terms or conditions on membership based on a prohibited criteria.

8. For persons whose business includes engaging in the business of residential real estate related transaction, to discriminate in making available, or in the terms or conditions of, any residential real estate related transaction because of race, color, religion, sex, handicap, familial status or national origin

9. "Coerce, intimidate, threaten, or interfere with" any person exercising a fair housing right or on account of a person having assisted others in exercising such rights.

Discriminatory Representations on the Availability of Dwellings

Under the Fair Housing Act, it is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental. HUD's regulations specifically list the five following prohibited actions, if such actions are done because of race, color, religion, sex, handicap, familial status, or national origin. These five items are only examples and the Act also prohibits other activities not necessarily listed below:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.
(2) Representing that instruments such as deeds, trusts, CC&R's, or leases, which purport to restrict the sale or rental of dwellings because of a protected class, preclude the sale or rental of a dwelling to any person of a protected class.
(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of a protected class.
(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.
(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether they are actually seeking housing.

SITUATION: An Asian woman wants to rent an apartment near her office. The Agent knowing the racial makeup of the neighborhood near her office is different, says that there isn't anything available in her price range in that area. Is this a violation? What if there isn't an apartment available?

Blockbusting

The Fair Housing Act provides that it is unlawful for a person to engage in "blockbusting." This occurs when a person, such as a real estate broker, for profit, induces or attempts to induce a person to sell or rent a dwelling by making representations regarding the entry (or prospective entry) into the neighborhood of persons of a particular race, color, religion, sex, handicap, familial status, or national origin. Most blockbusting cases involve a real estate broker's uninvited solicitation of homeowners to sell or rent their homes. It is sometimes referred to as "panic selling." According to HUD's regulations, blockbusting occurs in the following two examples (but, of course, is not limited to these two examples):

(1) Engaging, for profit or the availability of a profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing a change, or is about to undergo a change, in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.
(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry (or prospective entry) of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

SITUATION? Bill tells homeowners that this is the time to sell because the neighborhood is changing and the gang activity is increasing.

Steering

Steering is a practice whereby a real estate agent influences a person's housing choice based on prohibited criteria. The classic example is that of directing minority or all minority neighborhoods.

SITUATION: Steve assumes his clients would "feel more comfortable" in certain areas because others of their background live there. Maybe his clients are Jewish and he directs them to neighborhoods near the synagogue where other Jewish people are living. Is this steering?

Discrimination in Brokerage Services

The Fair Housing Act provides that it is unlawful to discriminate in the provision of real estate brokerage services. Specifically, the Act prohibits the denial of any person, based upon a protected class, access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings. The Act also prohibits discrimination against any person in the terms or conditions of such access, membership or participation, if such discrimination is based upon race, color, religion, sex, handicap, familial status, or national origin.

SITUATION: Doug sends all his prospects that do not speak the English Language well to other agents. He says that they can be better served by them.

Prohibitions Against Discrimination Because of Handicap

The Fair Housing Amendments Act of 1988 extends Title VIII to the physically and mentally disabled. The Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of a dwelling, or to otherwise make unavailable or deny a dwelling, to any buyer or renter because of a handicap of:

(1) that buyer or renter.
(2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.
(3) any person associated with that buyer or renter.

The Act also prohibits discrimination against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of such handicap. The disabilities covered include hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS and AIDS related illness, and mental retardation.

Consequences of Federal Fair Housing Violation

The potential penalties for violation of fair housing laws are so severe that responsible real estate brokers simply cannot assume the risk. Furthermore, fair housing cases are almost always excluded from errors and omissions policies.

An aggrieved person is one who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur. A person cam be one or more individuals, corporations, partnerships, or associations. An aggrieved person who believes to be a victim may bring an action directly in federal court or may file a complaint with HUD. If HUD finds reasonable cause, the case may be tried before a HUD Administrative Law Judge (ALJ) or before a federal district judge. If state or local law is deemed by HUD to be substantially equivalent to title VIII, HUD will refer all complaints from that jurisdiction to the state or local agency for processing.

Both ALJ's and federal courts may award actual damages, attorney's fees and issue injunctions to prevent any further discriminatory practices. An ALJ may also assess civil penalties, limited to $10,000 with not prior offense, $25,000 with one prior offense within five years, and $50,000 with two prior offenses within seven years. A federal court judge may also impose an unlimited amount in punitive damages plus attorneys fees and costs.

Also, the U.S. Attorney General may bring an action where a pattern of practice of discrimination has occurred, as opposed to a single isolated act and secure injunctive relief and damages, together with civil penalties of $50,000 for the first offense, and $100,000 for any subsequent offense.

One example of the importance of complying with federal fair housing laws, in July of 1992 a judge ordered a Washington D.C. area property management company to pay $2.41 million in damages to a woman who said the company refused to rent an apartment to her because she has children. In 1990, after being told for the second time that the building in which she and her children had hoped to rent was an "all adult" building , plaintiff, Carrie H. Timus sued the management company, claiming it violated federal fair housing laws that prohibit discrimination on the basis of familial status.

The damages award underscores the seriousness with which juries are viewing cases that involve discrimination against families with children. The extraordinary amount of the damages award send a message that society is not going to tolerate discrimination against families with children, " said NAR General Counsel Laurence K. Janik.

Washington State Discrimination Law

Washington State Law in RCW 49.60 prohibits discrimination in employment, credit, and insurance transactions, in public resort accommodation or amusement and in real property transactions. The protected classes include:

Race	Sex	Color	Disability
Creed	Marital status	National Origin	Service Dog
Color	Age	Sexual Orientation	

* presence or any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person.

Under the law AIDS and HIV are protected from discrimination in the same manner as those with any other mental or physical disability. In Washington state, though not specifically in the discrimination law, it is now legal for same sex marriages so they would be considered under a protected class of marital status.

The law applies to ALL real property transactions including sale, appraisal, brokering, exchange, purchase, rental, or lease of real property or applying for a real estate loan. The word "handicap" was amended to read "disability." Individuals with HIV or perceived HIV infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability. Landmark legislation was passed and became effective in 2006 making Sexual Orientation a protected class in this state. In addition, it is now legal for same sex couples to be married in Washington State.

Unfair Real Estate Practices under Washington Law on Discrimination

Discrimination in real estate transactions, facilities, or services is prohibited whether acting for himself, herself, or another.

Illegal discrimination is when:

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

It is unfair to:

- Refuse to engage in a real estate transaction with a person.
- Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.
- Refuse to receive or to fail to transmit a bona fide offer.
- Refuse to negotiate for a real estate transaction for a person.
- Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property.
- Discriminate in the sale or rental or make unavailable a dwelling to a person or a person associated with the person buying or renting because of a disability.
- Make, print, circulate, post or mail a statement, ad, or sign which indicates directly or indirectly to discriminate. To use a form of application or to make a record or inquiry in an attempt to discriminate in a real estate transaction.
- Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction.

- Expel a person from occupancy of real property.
- Discriminate in the course of negotiating, executing or financing a real estate transaction or services including title insurance.
- Discriminate in any credit transaction
- Induce or attempt to induce anyone for profit, anyone to sell or rent by making representations regarding entry into the neighborhood of a person of a particular protected class. This is called "blockbusting."
- Insert into a written instrument for real property, or honor or attempt any condition, restriction or prohibition based on a protected class.

These kinds of questions have sometimes been asked by the sellers and landlords. Regardless of who the agent represents, it is illegal to answer these questions or respond to these statements.

- Do the buyers have children?
- What is the race of your clients?
- Will the family go to the church next door?
- Is the buyer gay?
- Is your son have a mental disability?
- This is a family neighborhood. I don't think they would fit in.
- Is the buyer single?
- Are the buyers married? (marital status is protected. Escrow needs to know how they take title.)
- Are the buyers seniors?
- A married couple is more stable than a single woman. (major lawsuit on this statement)
- This is not a good neighborhood for children
- This would not be a good neighborhood for disabled children.

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

Often, people in condominiums and apartments want to discourage or eliminate children from the complex. A condominium board in Seattle was working on changing the rules to eliminate children because they didn't like that grandchildren were living in a unit. That cannot happen. In another case an offer wasn't accepted on a property because the daughter was disabled.

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

The Washington State Human Rights Commission was created to administer the law. It is to formulate policies and make recommendations to government agencies. It is composed of 5 members appointed by the Governor with the advice and consent of the Senate.
Not all cases go to the courts. People face discrimination every day. But, in the real estate industry, we have an obligation to uphold the laws to protect the rights for housing for all people.

Local Discrimination laws

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

Seattle Anti-Discrimination Laws

Seattle currently includes these protected classes:

Age **	Parental status *
Ancestry	Political ideology
Color	Race
Creed	Religion
Disability	Sex
Gender identity	Sexual orientation
Marital status	Use of a Section 8 certificate *
National Origin	Use of a service animal
	Veteran or Military status

*Not applicable to Employment or Fair Contracting cases **Not applicable to Public Accommodations cases

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n 2016 Seattle City Council passed the First Come First Serve law discussed under Landlord Tenant law. This will require landlords to choose the first qualified applicant for a rental property instead of choosing who they want from the pool of applicants.

Tacoma Fair Housing

The Tacoma Neighborhood & Community Services Department, Human Rights Division investigates and resolves complaints alleging discrimination in housing which violates the Law Against Discrimination, Chapter 1.29 of the Official code of the City of Tacoma, as amended, and the Federal Fair housing Act.
The Fair Housing Code, Chapter 1.29, as amended, prohibits unfair housing practices in the rental, sale, or financing of housing based on:

Race	Familial Status
Color	Disability
Sex	Ancestry
Religion	Sexual Orientation
Age	Gender Identity
National Origin	Veteran/Military Status
Marital Status	Familial Status

Condo Board denies Family from living in Subdivision

by Karen Peirolo, King County Office of Civil Rights 2002

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

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

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

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

Single Woman Sues Real Estate Agent for Discrimination

In May of 2004 a young woman said she encountered discrimination when she tried to buy a house in Tacoma … not because of her skin color, age, religion or ethnicity. She was discriminated because she is single.

She made an offer on a lovely two story house in Tacoma. "It was my dream house. A house that I wanted to purchase to raise a family," she said. The asking price was $196,000. She offered $199,000 and was pre approved for the mortgage.

The Listing Agent, when responding to her offer said, "Your guys deal was a better one but they decided to go with the other deal just because it was a married couple and they felt they would be a little more stable…. They were a bit nervous about it being a single woman trying to buy the house and they were just concerned it would come down to financing and something could possible go wrong."
It was discriminatory. The Federal Fair Housing act clearly states that it is unlawful to discriminate based on sex and familial status. The case was settled with the real estate company prior any court hearing. The sellers of a house are liable under Federal, State and Local Fair Housing and anti discrimination laws. The buyers have the right to purchase property regardless who they are or what their background.

Love Letters from Buyer to Seller

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

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

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

Love letters that are highlighted in articles throughout the internet most often come from a husband and wife with children. Many are accompanied by photos. An example of a love letter (edited) from the Seattle PI article in 2013 include:

> Dear ____ Family,
> My name is Christine and my husband's name is Nik. I was born and raised in _____ city and Nick was born in _____. We met and fell in love in 2010 and were married shortly after. We have a wonderful, smiling 4 month old, Lily. We spent our dating time in Capitol Hill and enjoyed it very much. Green Lake, Ravenna and Maple Leaf are where we hope to raise our children and put down long term roots. When we started our house search, proximity to this neighborhood was our priority. Your home is the first we have seen that genuinely meets all of our wants and needs. We can picture ourselves drinking coffee while watching our children play in the backyard. We would be deeply grateful to you if our offer is chosen.
> Sincerely, a married couple

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

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

Sometimes… ok… maybe often… the “perfect family” is not perfect. The husband could be abusive, the son could be a sex offender, the daughter might like to deal drugs. Choosing an offer based on a “sweet” letter and a nice photo could be just what the “family” was hoping for.
Everyone, regardless of their background, beliefs, health/disability, etc has the right to purchase a home in the area chosen. The seller violates anti-discrimination laws when a seller chooses one buyer over another using any information that could be construed as discrimination. The buyers that lost the property have the right to file a case of discrimination. Real estate agents are bound by federal state and local discrimination laws.

Let’s say that the sellers read the love letter and chose the “perfect little family” with a lower offer than the other letters from a single man, a gay couple, a relocation buyer from another country, a disabled person, etc. They may assume that no one will find out. The sellers and the agent think up reasons why the little family is more qualified. But, if any other buyer feels that there was discrimination, that other buyer has the right to file a complaint. And then the case is open. Whether a complaint is filed or not… there is still discrimination here. The agent participated and was aware of the violation. If the complaint moves forward all parties would have to tell the truth under oath.

If you speed down the road going over the speed limit set, you are still violating the laws even if you don’t get caught. Getting caught does not determine there is a violation. Getting caught starts the process because the violation may have existed.

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

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA), a federal law, became effective in 1992 to ensure that disabled persons have equal access to public facilities or in ay place of public accommodation. It also makes it illegal to discrimination in employment against an otherwise qualified individual because he or she has a disability. The ADA makes it unlawful to discriminate against people with disabilities. An individual is considered disabled if he has one of the following, (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a record of such impairment, and (3) is regarded as having such an impairment. Examples include impairment in walking, seeing, caring for oneself, a history of mental illness, heart disease, cancer, cerebral palsy, muscular dystrophy, multiple sclerosis, diabetes, AIDS, and HIV infection.

A public Accommodation includes real estate offices. It also covers hotels, restaurants, retail stores, shopping centers, banks, apartment buildings, parks, doctor offices and commercial establishments. It requires that

- Reasonable modifications are to be made in policies, practices and procedures in order to make goods or services accessible to those with disabilities.
- Barriers including structural and transportations must be removed if readily achievable.
- Auxiliary aids and accommodations are to be provided so that goods and services are available to disabled.

Another area in which the Office on the ADA has commented relates to model homes. If a sales office for a residential housing development is located in a model home, the area used for the sales office is considered a covered place of public accommodation and must be accessible, although model homes and open houses are generally not considered to be places of public accommodation. The Office on the ADA has stated that developers should voluntarily provide a minimal level of access to the homes for potential homebuyers with disabilities.

Both a tenant and owner of a place of public accommodation are subject to ADA compliance. Real estate brokers representing parties to transactions involving places of public accommodations should recommend that their clients hire experts to conduct an ADA review.

The ADA requires that employers make reasonable accommodation to the known physical or mental disabilities of a qualified applicant or employee, unless it would impose an undue hardship on the employer. Reasonable accommodation will be decided on a case-by-case basis, but may include job restructuring, modified work schedules, providing readers or interpreters, raising a desk for a person with a wheelchair, or allowing a person to bring a service animal into the workplace. For example, if a person has requested an interpreter, it is necessary to provide a qualified interpreter. A qualified interpreter is one "who is able to interpret effectively, accurately and impartially both receptively and expressively using any necessary specialized vocabulary."

Employers with 15 or more employees may not discriminate in the recruitment, hiring, training, job responsibilities, promotions, pay, benefits, layoffs, firing or any other employment activity because a person has a disability.

The U.S. Department of Justice enforces the ADA through complaints, lawsuits, and settlement agreements. However, private parties may bring lawsuits under the ADA. In addition, the attorney general can file a lawsuit when there is a pattern of alleged discriminations or in cases of general public importance. A party found in violation of the ADA can face mandatory compliance, monetary damages, and civil penalties. The maximum civil penalty is $75,000 for a first violation under Title III of the ADA and $150,000 for a subsequent violation occurring on or after April 28, 2014. (Updated April 2016 Texas REALTORS)

Section 5 Complete Quiz in Workbook

Section 6

Employment Law
Financing and Closing
Anti-Trust and Fraud

This chapter is an overview of some of the most current issues in the industry today.

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

Section 6 Objectives

As a result of taking this chapter of the Washington Real Estate Law class the agent shall be able to:

- Identify the difference between an employee vs an independent Contractor.
- Know the laws that affect the hiring, benefits and termination of employees.
- Know the changes that were made when the Consumer Finance Protection Bureau was created.
- Know the role of escrow
- Identify the role of the Consumer Protection Bureau
- Understand the provisions under Federal Anti-trust laws
- Be able to identify fraud and know about confidentiality

Employment Law

There are strict employment laws in our country and in Washington State. The majority of real estate brokers are considered and treated under the laws as independent contractors. Many of the laws exempt independent contractors. Discrimination laws apply to all job positions. Every person regardless of their background has the right to be considered for a position. A short list of employment laws includes:

- Equal Employment Opportunity Commission 2002
- Title VII Civil Rights act of 1964
- Age discrimination in Employment Act
- American with Disability Act (ADA)
- Equal Pay Act of 1963
- Employee Retirement Income Security Act
- Minimum Wage
- Fair Labor Standards Act (FLSA)
- Occupational Safety and Health Act (OSHA)
- Consolidated omnibus Budget Reconciliation Act (COBRA)
- Family and Medical Leave Act
- Washington State Law on Discrimination
- Washington State Labor and Industries (L&I)
- Washington State Fair Labor and Practices
- Washington State Workers Compensation

The traditional real estate firm before the turn of the century was typically structured with a designated broker/owner with a number of brokers as independent contractors working out of the office. They were paid often a commission split between the firm and the broker. There was typically a maximum that when reached, the broker kept the total amount of commission until the end of the year or renewal period.

Today, there is a variety of different structures of a real estate firm. Where most brokers were previously independent contractor's there are some firms that have real estate agents working as independent contractors, direct employees, members of teams, and out of home offices. Staff and administration are considered employees.

Independent Contractors and Employees

Generally, an employee is a person who performs a service for another (the employer) when the employer has the right to control both what will be done and how it will be done. An independent contractor is generally hired to perform a particular job and to use own judgment as to how the work will be done.

Most real estate brokers are considered independent contractors under tax law. They are independent if:

- Substantially all payments are directly related to sales rather than a number of hours worked; and
- All work is one under a written contract that states they will not be treated as employees for federal tax purposes. (the independent contractor agreement)

Most real estate agents still are considered independent brokers. The designated broker cannot treat them as employees, but gives them the freedom to work independently and report income on IRS taxes as a contractor.

The real estate industry's regulatory structure presents a unique framework within which to operate when it comes to worker classification. The main characteristic of an independent contractor relationship is one where the worker is generally free of control. However, Washington State statutes under License Law RCW 18.85 and RCW 18.86 specifically require managing and designated brokers to exercise supervision over their agents. Since the requirement of a broker to exercise supervision over agents is in direct conflict with one of the basic tenants of an independent contractor relationship, it is difficult for a broker to both comply with labor laws in order to establish an independent contractor relationship, while also fulfilling their supervisory duties under state real estate laws. But, both Federal and state legislatures have recognized the unique aspects presented by the real estate industry by addressing the independent contractor issue. As seen below, the Federal and Washington State laws are noted.

The United States Internal Revenue Service ("IRS") considers real estate agents to be "statutory nonemployees" if three factors are met.

- First, the real estate agent must be licensed.
- Second, substantially all payments for the licensed real estate agent's services must be directly related to their sales or other output rather than based on number of hours worked, and
- Thirdly, the real estate agent's services must be performed pursuant to an agreement that states the real estate agent will not be treated as an employee for federal tax purposes.

While satisfaction of the aforementioned IRS test relates only to the federal tax treatment of real estate agents, it demonstrates the federal government's recognition of the unique nature of the real estate industry and, as such, the need to treat it differently than other industries.

The National Association of REALTORS studied the classification of real estate agents as independent brokers in 2015. The White Paper was updated in 2016. Available at www.realtor.org.

Most staff at a real estate firm are considered employees as they are paid by the hour, have work schedules, and work under a employer conducting business according to what the firm requires.

Federal IRS	Tax Code	United States Code Annotated Title 26. Internal Revenue Code Subtitle C. Employment Taxes Chapter 25. General Provisions Relating to Employment Taxes § 3508. Treatment of real estate agents and direct sellers	(a) General rule.--For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller-- (1) the individual performing such services shall not be treated as an employee, and (2) the person for whom such services are performed shall not be treated as an employer. (b) Definitions.--For purposes of this section-- (1) Qualified real estate agent.--The term "qualified real estate agent" means any individual who is a sales person if-- (A) such individual is a licensed real estate agent, (B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and (C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.
Washington State	Labor-Other/ General Minimum wage	RCW 49.46.130 Minimum rate of compensation for employment in excess of forty hour work week — Exceptions.	(2) This section does not apply to: … (j) Any individual licensed under chapter 18.85 RCW unless the individual is providing real estate brokerage services under a written contract with a real estate firm which provides that the individual is an employee. For purposes of this subsection (2)(j), "real estate brokerage services" and "real estate firm" mean the same as defined in RCW 18.85.011.
Washington State	Labor – Other/General: Unemployment Compensation	RCW 50.04.230 Title 50. Unemployment Compensation Chapter 50.04. Definitions 50.04.230. Employment--Services of insurance agent, broker, or solicitor, real estate broker or real estate salesperson, and investment company agent or solicitor	The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesperson to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940."

Interviewing Prospects

When interviewing a prospect for a potential real estate broker position as an independent contractor or for a staff or administrative employee do not ask questions that may violate laws. Under Washington State Discrimination law, an interviewer may not ask prospects questions that could reveal the applicant's membership in a protected class. A protected class includes any questions that would identify or question the prospects race, color, religion, sex, national origin, familial status or handicap. This also includes sexual orientation. In Washington State, same sex marriages are legal so any questions on that would be considered discriminatory. Washington State is one of the few states that ended affirmative action in 1998. In order to avoid any sense of discrimination, avoid any questions that include:

Pregnancy	Origin of prospects name
Citizenship Can only ask if the prospect is prevented from being lawfully employed because of visa or immigration status.	Maiden name
Questions about children, ages, familial status	Disabilities or questions about them
Sexual orientation	Student questions…
Gender issues	Senior questions
Age of prospect	Member in an association to discover a protected class
Available to work on Saturday or Sunday (religious reasons)	Government Subsities questions
Where prospect grew up	

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) is federal law is administered by the US Department of Labor. It sets forth rules for minimum wage, overtime, and recordkeeping for all full and part time employees covered by the act. Under FLSA, an employee has the right to be paid overtime for working more than 40 hours in a week. The pay rate would be 1 1/2 times the regular rate of pay. Commissioned salespeople, executives and administrative employees are exempt. The FLSA requires employers to keep basic records on each employee including name and address, wage and occupation, age (if under 19), total hours worked, overtime, deductions date of payment and pay period covered.

Occupational Safety and Health Act (OSHA)

In 1970 the Occupational Safety and Health Act was established to help prevent work-related injuries, illnesses and deaths. It is overseen by the Department of Labor. It helps to ensure safe and healthy work environments. All employers must post a federal or state OSHA poster providing employees their rights under the act.

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Congress created the Consolidated Omnibus Budget Reconciliation Act (COBRA) in 1984 to provide employees with continued health insurance coverage when coverage would have terminated because of a job loss or reduction in hours. It is available to employees and their family previously enrolled in the employer's group health plan. Real estate brokers who participated in the health plan may also be covered. For coverage to apply, the employee's termination or reduction in hours can be voluntary or involuntary but it cannot be the result of gross misconduct. Eligible people have up to 60 days to elect COBRA coverage after their health insurance would normally have ended.

Washington Workers Comp

Real estate agents in Washington state are most often considered self-employed. They do not qualify for unemployment compensation. But, real estate agents do fall under the umbrella of worker's compensation known as industrial insurance under the Department of Labor and Industries.

According to a 1993 court decision in Washington State, it made it clear that real estate firms are responsible for providing workers comp for the affiliated licensees even though they are independent contractors. Premiums are paid by the employer into a state fund to be used to pay for an injured worker's medical care. Some of the premiums can be passed on to the licensees.

Tax Issues

Foreign Investment in Real Property Tax Act

The Foreign Investment in Real Property Tax Act (FIRPTA) originally passed in 1981was amended becoming effective February 2016. Escrow and title agent will need to hold back more proceeds for the sale of a property by foreign nationals. This law requires foreign persons to pay U.S. income tax on the gains they make from selling U.S. real estate. In most cases, the settlement agent is the party that remits the funds to the IRS, but the BUYER is held legally responsible. Until the tax is paid in full, the government obtains a security interest in the real property. So when a foreign national sells the buyer is held legally responsible for tax that is owed. Watch the forms when you are working with a foreign seller.

Under the changes, the withholding rate for sale by foreign nationals will increase to 15% of the total sales price for properties where the sale exceeds $1 million.

The current FIRPTA exemptions include sales under $300,000 for the sale of a primary residence of vacant land when used by the buyer as a primary residence. For sales of primary residences where the sales price is between $300,000 and $1 million and the buyer is using the property as the primary residence, the withholding is 10%.

Tax Deferred Exchanges

Whenever a client sells a business or investment property and there is a net gain, it is required to pay tax on the gain at the time of sale. IRC Section 1031 provides an exception and allows a person to postpone paying tax on the gain if the person reinvests the proceeds in similar property as part of a qualifying like-kind exchange. Gain deferred in a like-kind exchange under IRC Section 1031 is tax-deferred, but it is not tax-free.

The exchange can include like-kind property exclusively or it can include like-kind property along with cash, liabilities and property that are not like-kind. If a seller receives cash, relief from debt, or property that is not like-kind, however, the seller may trigger some taxable gain in the year of the exchange. There can be both deferred and recognized gain in the same transaction when a taxpayer exchanges for like-kind property of lesser value.

When working with a seller who is planning a tax deferred exchange, it is important that he/she seek legal advice. There are strict rules and timelines that must be adhered to in order to have the tax on the gain deferred.

Finance and Closing

Consumer Finance Protection Bureau

The CFPB was created after the 2008 financial crisis to provide a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace. Before, that responsibility was divided among several agencies. Today, it's the primary focus.

- Rooting out unfair, deceptive, or abusive acts or practices by writing rules, supervising companies, and enforcing the law
- Enforcing laws that outlaw discrimination in consumer finance
- Taking consumer complaints
- Enhancing financial education
- Researching the consumer experience of using financial products
- Monitoring financial markets for new risks to consumers

The CFPD regulations came into effect in October 2015. The HUD1 statement is now called the Closing Disclosure (CD) and the Good Faith Estimate (GFE) will be the Loan Estimate (LE). There will be delays if there are last minute changes, lenders have to be more accurate, and lenders have to provide disclosure three days before closing.

Mortgages transactions can be very complex. Because the forms have been confusing and there have been two distinct bodies regulating the forms, Congress directed the Consumer Financial Protection Bureau to replace old truth in lending and Good Faith Estimate forms. All lenders will be required to give consumers the new Loan Estimate and the Closing Disclosure after October 2015.

The Lender is to provide the consumer the Loan Estimate three business days after application. Studies by HUD have found that few consumers "shop" for a mortgage and most often apply and close with the first lender they met. The Loan Estimate will make it easier to compare loan programs. It will use clear language to help consumers understand the mortgage loan. The interest rate, monthly payments and total closing costs will be clearly presented making it easier to compare programs.

The lender is required to provide the borrower the Closing Document (used to be known as the HUD 1) at least three business days before closing on the Mortgage Loan. This additional time will allow borrowers to compare the final terms and costs to the terms and costs the received in the estimate. This will better equip them to raise any questions before they go to the closing table. According to the Consumer Financial Protection Bureau, the new mortgage disclosure will not necessarily delay closings.

If there are significant changes to the loan prior to closing, the borrower will have an additional three day review. This will occur only if:

1. The Annual Percentage rate increases by more 1/8%for a fixed rate loan or ¼% for an adjustable loan. Lenders have been required to provide a three day review for these changes since 2009!
2. A prepayment penalty is added making it expensive to refinance or sell.
3. The basic loan product changes, such as a switch from fixed rate to adjustable interest rate or to a loan with interest only payments.

The are many circumstances that do not require a new three day review. They can include, for example, if a buyer finds a problem on the final walkthrough like a broken refrigerator even if they require seller credits to the buyer. Also, most changes to payments including the amount of real estate commission, taxes and utilities proration and the amount paid into escrow. Typos found at the closing table will not require an additional three day review.

The Consumer Financial Protection Bureau CFPB passed new regulations that affect lenders and borrowers. The rules hold mortgage lenders legally responsible for ensuring that consumers can pay back their loans and create a new qualified mortgage category with better protections for borrowers.

Borrowers who fall behind now have more options.

- Mortgage servicers will now have to contact borrowers by the time they are 36 days late.
- Mortgage servicers cannot initiate a foreclosure until a borrower is more than 120 days delinquent. This should give borrowers time to submit an application for a loan modification or another alternative to foreclosure.
- Mortgage servicers can no longer start a foreclosure while they are also working with a homeowner who has submitted an application for help.
- Mortgage servicers must make sure the people who take borrowers calls are able to answer questions and have access to critical documents.
- Mortgage servicers will have to give homeowners who ask timely accurate information about their foreclosure status when asked.

There is more information on the changes at consumerfinance.gov

Escrow and Closing

An escrow is a method of closing in which ***a neutral third party*** is authorized to act as escrow agent and coordinate the closing activities of a real estate transaction. The escrow agent holds monies and legal documents on behalf of the buyer and seller and handles them according to their instructions in order to close or complete the sale. Escrow agents must be licensed and registered with the state.

Under the Washington Escrow Agent Registration Act, escrow is formally defined as:

> "Any transaction wherein any person(s), for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance or lease of real or personal property to another person(s), delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition(s), when it is then to be delivered by such third person in compliance with instruction under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof."

The word "escrow" has three basic meanings.

1. Closing… as in closing a real estate transaction
2. It can also refer to long term seller financing.
3. It can also be referred to a reserve account.

Washington's Escrow Agent Registration Act RCW 18.44 requires escrow agents to be licensed and registered with the Department of Financial Institutions (D.F.I.). There are a number of exemptions from these requirements, however. Attorneys, title companies, banks, savings and loans, credit unions, insurance companies, and federally approved lenders are allowed to perform escrow services without being licensed or registered under the act. In addition, those acting under the supervision of a court such as receivers, trustees in bankruptcy, guardians, executors, and probate administrators can close transactions.

For a company to be licensed as a Certified Escrow Agent to engage in the escrow business under the registration Act it is necessary for a partner or corporate officer to:

- pass an escrow agent examination,
- pay a fee,
- submit affidavits of good character,
- present a good credit report, and
- obtain a fidelity bond.

The certified escrow agent may employ Escrow Officers to close transactions and they must also be licensed. The term "Escrow Officer" is someone who is licensed in Washington State as an escrow officer.
A "Closer" is someone who works for an escrow agent.
The term "L.P.O." is short for Limited Practice Officer, a person who has been authorized to prepare certain closing documents and perform routine closing functions under rules approved by the Supreme Court of Washington. A closer may or may not be an LPO. Different laws govern the conduct of different classes of Escrow Agent.

Out Of State Escrow

Often REO's require the use of an out of state escrow to close a transaction. This may be considered unlicensed activity.
"It shall be unlawful for any person to engage in business as an escrow agent by performing escrows or any of the functions of an escrow agent as described in *RCW 18.44.011(4) within this state or with respect to transactions that involve personal property or real property located in this state unless such person possesses a valid license issued by the director pursuant to this chapter." There are exceptions which include: Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, or any federally approved agency or lending institution under the national housing act (12 U.S.C. Sec. 1703)."
This does not include independent escrows in other states not licensed in Washington State.

According to the Real Estate Settlement and Procedures Act RESPA), a seller is prohibited from requiring the home buyer to use a particular title insurance company, either directly or indirectly as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

Can the listing agent for the seller require that the Buyer use a certain title or escrow company because they ordered the preliminary title and have communicated with the title company prior to the sale?

No. The seller cannot require a buyer to use a designated title or escrow company as a condition of the sale.

The escrow agent is a special agent for both parties and acts in accordance with the escrow instructions given by both. **The escrow agent is a neutral third party** who does not represent anyone in the transaction. If a party has a question about any aspect of the transaction, he or she should consult his or her own attorney for advice. Because of the escrow's limited duties of disclosure and the confidentially of the escrow in general, facts known to the escrow holder are normally not imputed or implied to the other party. The escrow agent is a limited agent for both parties. Once the conditions to the escrow transaction have been performed, the nature of the dual agency changes. Escrow then becomes the agent for the seller for the money and the buyer for the deed. Escrow acts as the "clearing house" for the details of the transaction. These are the most frequently asked questions by real estate agents!

Can the Closing Agent prepare an addendum to extend the closing date?

No, the Closing Agent is a Neutral Third Party and cannot prepare addendums to the transaction. The Closing Agent takes instructions to prepare closing documents from the Purchase and Sale Agreement.

Can an L.P.O. prepare addendums because they are considered Limited Practice Officers and pass a test and are licensed?

No, the L.P.O. license does not give them the authority to prepare documents for a purchase and sale.

The purchase and sale agreement serves as the primary escrow instructions for both the seller and the buyer. It should contain the agreement of the parties as to who pays for what expenses, proration dates, closing dates, etc. Escrow cannot be bilaterally revoked. In the event of a disagreement, the escrow can only be amended, changed, or revoked by mutual agreement of the parties to the escrow.
The escrow agent is not authorized to comply with any instructions or demands of any third person that is not a party to the escrow.

Can a broker demand that the escrow agent release his commission?

The escrow agent can only close the transaction according to the instructions given. A broker is a third party and not a party to the escrow, so the broker cannot give instructions to the escrow agent.

Proof of Signatory Authority

Often the signatory authority for property is not the actual owner. The escrow and title company can give a real estate broker guidance on who has the authority to sign for a real estate transaction. If an agent proceeds with contracts and a transaction without checking to verify the validity of the signature, there could be serious legal complications. These are the most common signatories.

1. Power of attorney: The power of attorney document has language in it that must meet certain requirements. Escrow and title looks for the key word "sell, convey, borrow" to be in there. Always have the form sent to the escrow/title company ahead of time to be reviewed. If it is a durable power of attorney and the person is incapacitated, the title company would need a form from the clients doctor in order to use it.

2. Trust: A copy of the trust originally formed would grant the powers per the RCW and list the powers the trustee has and who they are, or whether there is a co-trustee, or alternatives

3. Corporation: A client will provide a copy of the articles of incorporation which will indicate powers and who has authority to sign on behalf of the corporation.

4. Limited Liability Company (LLC): The formation documents of the LLC will designate who will sign, and manage the LLC. If not, then all parties of the LLC (that are listed on state website) must sign, including their spouses, (even if spouses are not listed on LLC)

5. Guardian: State of Washington court system appoints a guardian. Guardian cannot do anything without petitioning the court for approval. The title company will then view court records for approval and note in title that so and so has right to sign for.....

Anti-Trust

The Consumer Protection Act

In Washington State the Consumer Protection Act RCW 19.86 is to protect the Washington State marketplace free from unfair and deceptive practices. The Consumer Protection Act is enforced by the Consumer Protection Division under the Washington State Attorney General's office. The Division investigates and files legal actions to stop unfair and deceptive practices, recover refunds for consumers and imposes penalties on offending businesses and recovers attorney's fees and costs.
Unfair practices can include the same kind of anti-competitive activities that violate federal anti-trust law such as price fixing, tying and boycotts.

Sherman Anti-Trust Act

Over 125 years ago the Sherman Act was passed to promote the policy and practice of competition and prohibit any agreement that has the effect of unreasonably restraining trade including conspiracies.

The reason that it is so important in the real estate industry is that if all of the brokerages got together and decided what to charge and then charged that amount to consumers, there would be restricted competition. By doing that, real estate firms, associations and groups could block others from introducing different business models that may be competitive. The commissions that real estate firms and brokers charge are not fixed or determined by any association or multiple listing service. The amount of commission paid to a cooperative broker in a transaction in a multiple listing service is also not fixed.

The activities that are prohibited that may violate anti-trust laws include:

Price Fixing
Price fixing is defined as the cooperative setting of prices or price ranges by competing firms. To avoid any appearance of price fixing, two brokers from different firms should not discuss their commission rates. Commission fees charged consumers should never be discussed in classes or broker meetings. The REALTOR associations across the country and in the State of Washington do NOT set commissions. It would be unlawful to discuss commissions at REALTOR meetings because it may appear to be an attempt at price fixing.

At a real estate class, a broker discussed how he charging a higher commission and that if the others in his area would go along with the higher commission they could all make more money. This is an obvious violation of the Sherman Act.

Boycotts
A group boycott is an agreement between two or more real estate brokers to exclude other firms from fair participation in real estate activities. This can include avoiding doing business with a particular broker or an entire firm. The purpose of the boycott is to hurt or destroy a competitor which is unlawful.

At a meeting of a real estate firm an agent brought up the topic that a competing firm was offering lower commission than her own firm to brokers that sold that firms listing. The broker did not feel that was "fair" and that her firm should avoid showing that firms listings. That would be an obvious violation of the Sherman Act.

Tying Agreements

A tying agreement is defined as an agreement to sell only product on the condition that the buyer also purchases another product. This is most often seen in the real estate industry when a real estate broker sells a builder land for a discounted commission if the builder lists the new construction homes with the broker when complete. This is also called a "list-back" agreement.

Market Allocation

When competing real estate firms agree to split the market area so that one firm will specialize on one side of the market and the other will specialize on the other essentially dividing the town into territories. This would limit the competition in the town and restrict the choices that consumers would have for selling their property.

A group of real estate firms meet at lunch and decide that the will each take and market to opposite sides of the river to avoid "stepping on each other's toes." This would be an obvious violation of the Sherman Act.

Complaints can be made to the Federal Trade Commission or the U.S. Attorney General. Civil actions can also be filed.

Real Estate Fraud

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

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

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

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

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

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

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

There are a number of schemes in the market that are fraudulent. It is important not to participate in any transaction where there is not full disclosure or participate in any possible fraud. Most real estate transactions involve mortgage lending. The applications and closing documents are federal forms regulated by the federal government. The forms most often cross state lines so any fraud could fall under wire or mail fraud. Cash deposits or earnest monies must be verified because there could be money laundering involved.

One common scheme in the market today is what is sometimes known as “short sale flopping.” This is where a buyer makes an offer on a short sale and prior to closing attempts to find another buyer. The buyer might market the property, for example, on craigslist.com for a higher price that is negotiated with the bank. The first buyer signs papers in escrow on federal forms that they are not reselling the property immediately. Then the first buyer closes the short sale and at another time, either the same day or up to a few months later sells to the second buyer. The attempt is to deceive the lender, the first buyer is unlicensed and cannot market the property that he doesn’t own and the second buyer is often not informed about the previous short sale.

Another scheme that is prevalent is when a scammer takes the information about a listing for sale or rent. Then price and terms so it is unbelievably low and relists the property, for example, on CraigsList.com. They create a new email and phone and tell those that inquire that it must be rented right away because of any number of reasons including sickness in family, transfer, religious reasons. The person inquiring is told to fill out an application with all kinds of personal information including social security number and send a check for a deposit and the house will be theirs at the end of the month. Of course, the scammer doesn’t own the house so come the first of the month a knock on the door by the potential renter who send off money to some stranger online finds the seller living in the house or a vacant house on the market for sale not owned by the scammer.

There are numerous foreclosure rescue schemes. Red flags for fraud and schemes include:

- guarantees to stop foreclosure
- a promise the homeowner can buy the house back or rent it after “selling” it to the foreclosure rescue person
- upfront fees to help stop foreclosure
- instructions not to contact the lender
- a promise to transfer the title or eliminate the mortgage, or
- a request for a seller to execute a power of attorney.

Other types of fraud include:

- The Nigerian 419 Advance Fee Fraud where a person is asked to send some fee to process a transaction for an out of country buyer to purchase a property, to get a million dollars out of a country, or to start the process to get an inheritance from a relative that perished in the tsunami. Those are only a few examples. In the case of the real estate example, they often offer higher than asking price and promise higher commissions.
- Mortgage Fraud where a lender does anything from falsifying loan documents, creates fake employment verifications, and uses inflated appraisals. There are about a thousand ways to commit mortgage fraud.
- Mortgage elimination where a homeowner with a mortgage is convinced that the mortgage can disappear with the payment of a fee and the signature on some documents.
- Lease and Rental fraud where a listing, vacant house or a rental currently on the market is advertised by a fake owner who offers the property much less than market rent value and asks the prospective tenants to fill out an application and send along a deposit.
- Clouding the title is a way that a homeowner in foreclosure can delay an attempt for a bank owned property to sell. The homeowner remains in the property while the title is in dispute.
- Using undocumented funds which could be laundered money to purchase real estate.

Washington State Fraud Cases

One very large case of fraud in Washington State received national attention in 2010-2013.

Most real estate agents knew during the height of the crazy real estate market between 2004- 2008 that Shawn Portman with Pierce Commercial Bank could get just about anybody a loan. A job or income was not even required. Throughout the Puget Sound, real estate agents talked about him. It took many years, but he did plead guilty of mortgage loan fraud. From his perch as the top individual loan officer in the country closing about 120 loans in a month, he headed to a federal prison for taking down a bank.

Portman created verifications for jobs that didn't exist, income that was never paid, and bank accounts with no money that he documented. Federal authorities and former bank officials say he frequently made up information out of whole cloth—and then created phony documentation and padded borrowers' bank accounts to back up his lies. According to authorities, would "season" his clients' bank accounts with his own money, some of which he kept stashed in a home safe for just that purpose.

Based on a review of a sample of loans, Portman and his colleagues caused more than 270 loans that contained false and fraudulent documents and information to be funded by Pierce Commercial Bank representing in excess of $45 million in loan proceeds. More than 100 of these loan files defaulted, causing in excess of $10 million in loss to Pierce Commercial Bank, secondary investors, and HUD/FHA. The indictment detailed multiple false statements included in loan documents regarding an applicant's employment, income, and intention to reside in the property.

The original indictment alleges that Portman committed mail fraud affecting a financial institution when sending various documents through the mail to support the scheme. Portmann was charged with counts of wire fraud stemming from the sale of these mortgages on the secondary market to financial institutions such as Wells Fargo, Countrywide, IndyMac and J.P. Morgan Chase.

Portmann was charged with bank embezzlement for billing Pierce Commercial Bank for advertising that never occurred. He set up two companies and using these companies he billed Pierce Commercial Bank more than $150,000 for advertising that was never provided. He used some of these funds to purchase a $68,000 BMW. That purchase is the basis for the transactional money laundering count.

In 2012 Portmann accepted a plea agreement which cited only ONE mortgage that resulted in default, but a previous statement claimed there were at least 100 such ruinous loans. Portmann and prosecutors agreed to jointly recommend a prison sentence of between 10 and 14 years, rather than the 50 plus years he could have faced had he been found guilty at a trial.

Shawn Portmann did not act alone. He had other lenders, escrow and title people cooperating to create phony documentation and to process loans from borrowers who were incapable of paying. Real estate agents also participated by knowing that their client was not qualified when writing an offer. There was a buyer who drove a taxi with a low income and no savings does not have the ability to buy an expensive condominium in downtown Bellevue (real case.) Agents would sell investors houses, one after another, knowing that they were getting financing as owner occupied when they were rentals. The fraudulent cases were everywhere.

If it looks like a fish, smells like a fish and feels like a fish… there's a good chance that it is a fish. Learn to be able to spot fraud in the industry.

Privacy and Confidential Information

The Can-Spam Act

The Can-Spam federal law derives from the bill's full name: ***C*ontrolling the *A*ssault of *N*on-*S*olicited *P*ornography *A*nd *M*arketing Act of 2003**. It plays on the word "canning" (putting an end to) spam, as in the usual term for unsolicited email of this type; as well as a pun, in reference to the canned SPAM food product. It established the guidelines for sending unsolicited emails. If an email is commercial in nature the subject and heading can't be misleading, message must be identified as an ad, there must be an opt-ouut and it includes third party email.

The Do Not Call List

This is a Federal Trade Commission(FTC) law to try to stop telemarketers from making phone calls to people who do not want to be on their list. People can register their phone, including cell phone number, on the Do Not Call list. Telemarketers are required to check the list every 31 days. A telephone solicitation is defined as a live or recorded communication sent by telephone or fax machine. It exempts charities, collection agencies, and political calls. According to the law, a broker may not call a For Sale By Owner FSBO if the number is on the Do Not Call list to solicit a listing but may call if the broker has a buyer that is interested. If the property was listed, brokers from that firm may contact the seller for up to 18 months after the expiration date. If the number is on the list, brokers from other companies may not call.

Confidential Information

A real estate broker owes the duty to the principal to keep confidential information about the principal. This duty survives the agency relationship.
In the Law of Agency RCW 18.86 confidential information is defined as:

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

Section 6 Complete Quiz in Workbook

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

The material in this class and exams
covers most of what is on the national and state exam!

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