

# The Law Of Real Estate Agency

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson.

Please read it carefully before signing any documents.

The following is only a brief summary of the attached law.

## 1 Definitions

Defines the specific terms used in the law.

## 2 Relationships between Licensees and the Public

States that a licensee who works with a buyer or tenant represents that buyer or tenant — unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client — unless the parties agree in writing that both licensees are dual agents.

## 3 Duties of a Licensee Generally

Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

## 4 Duties of a Seller's Agent

Prescribes the additional duties of a licensee representing the seller or landlord only.

## 5 Duties of a Buyer's Agent

Prescribes the additional duties of a licensee representing the buyer or tenant only.

## 6 Duties of a Dual Agent

Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

## 7 Duration of Agency Relationship

Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

## 8 Compensation

Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows broker to receive compensation from more than one party in a transaction with the parties' consent.

## 9 Vicarious Liability

Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

## 10 Imputed Knowledge and Notice

Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

## 11 Interpretation

This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

In the attached law,  
*terms in italics* are defined in Section 1

## 1 Definitions

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

(1) “**Agency relationship**” means the agency relationship created under this chapter 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) “**Business opportunity**” means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) “**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.

(5) “**Buyer’s agent**” means a licensee 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.

(6) “**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 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.

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

(8) “**Licensee**” means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in Chapter 18.85 RCW.

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

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

(12) “**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.

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

(14) “**Seller’s agent**” means a licensee 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.

(15) “**Subagent**” means a licensee who is engaged to act on behalf of a principal by the principal’s agent where the principal has authorized the agent in writing to appoint subagents.

## 2 Relationships between Licensees and the Public

(1) A licensee who performs real estate brokerage services for a buyer is a buyer’s agent unless the:

(a) Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller’s agent;

(b) Licensee has entered into a subagency agreement with the seller’s agent, in which case the licensee is a seller’s agent;

(c) Licensee has entered into a written agency agreement with both parties, in which case the licensee is a dual agent;

(d) Licensee is the seller or one of the sellers; or

(e) Parties agree otherwise in writing after the licensee has complied with Section 3(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under Section 6. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) 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 party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction.

## 3 Duties of a Licensee Generally

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

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

(c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

(d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under Section 2(1)(e), 4(1)(e), 5(1)(e), or 6(2)(e) or (f), whichever occurs earliest; and

(g) 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 parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled “Agency Disclosure” in the agreement between the *buyer* and *seller* or in a separate writing entitled “Agency Disclosure.”

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

#### 4 Duties of a Seller’s Agent

(1) Unless additional duties are agreed to in writing signed by a *seller’s agent*, the duties of a *seller’s agent* are limited to those set forth in Section 3 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(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*; and

(e) Unless otherwise agreed to in writing after the *seller’s agent* has complied with Section 3(1)(f), to make a good faith and continuous effort to find a *buyer* for the property; except that a *seller’s agent* is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)(a) The showing of properties not owned by the *seller* to prospective *buyers* or the listing of competing properties for sale by a *seller’s agent* does not in and of itself breach the duty of loyalty to the *seller* or create a conflict of interest.

(b) The representation of more than one *seller* by different licensees affiliated with the same broker in competing *transactions* involving the same *buyer* does not in and of itself breach the duty of loyalty to the *sellers* or create a conflict of interest.

#### 5 Duties of a Buyer’s Agent

(1) Unless additional duties are agreed to in writing signed by a *buyer’s agent*, the duties of a *buyer’s agent* are limited to those set forth in Section 3 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(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*; and

(e) Unless otherwise agreed to in writing after the *buyer’s agent* has complied with Section 3(1)(f), to make a good faith and continuous effort to find a property for the *buyer*; except that a *buyer’s agent* is not obligated to: (i) Seek additional properties to purchase while the *buyer* is a party 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*.

(2)(a) The showing of property in which a *buyer* is interested to other prospective *buyers* by a *buyer’s agent* does not in and of itself breach the duty of loyalty to the *buyer* or create a conflict of interest.

(b) The representation of more than one *buyer* by different licensees affiliated with the same broker in competing *transactions* involving the same property does not in and of itself breach the duty of loyalty to the *buyers* or create a conflict of interest.

#### 6 Duties of a Dual Agent

(1) Notwithstanding any other provision of this chapter, a licensee may act as a *dual agent* only with the written consent of both parties to the *transaction* after the *dual agent* has complied with Section 3(1)(f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a *dual agent*, the duties of a *dual agent* are limited to those set forth in Section 3 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

(a) To take no action that is adverse or detrimental to either party’s interest in a *transaction*;

(b) To timely disclose to both parties any conflicts of interest;

(c) To advise both parties to seek expert advice on matters relating to the *transaction* that are beyond the *dual agent’s* expertise;

(d) Not to disclose any *confidential information* from or about either party, except under subpoena or court order, even after termination of the *agency relationship*;

(e) Unless otherwise agreed to in writing after the *dual agent* has complied with Section 3(1)(f), to make a good faith and continuous effort to find a *buyer* for the property; except that a *dual agent* is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the *dual agent* has complied with Section 3(1)(f), to make a good faith and continuous effort to find a property for the *buyer*; except that a *dual agent* is not obligated to: (i) Seek additional properties to purchase while the *buyer* is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the *dual agent*.

(3)(a) The showing of properties not owned by the *seller* to prospective *buyers* or the listing of competing properties for sale by a *dual agent* does not in and of itself constitute action that is adverse or detrimental to the *seller* or create a conflict of interest.

(b) The representation of more than one *seller* by different licensees affiliated with the same broker in competing *transactions* involving the same *buyer* does not in and of itself constitute action that is adverse or detrimental to the *sellers* or create a conflict of interest.

(4)(a) The showing of property in which a *buyer* is interested to other prospective *buyers* or the presentation of

additional offers to purchase property while the property is subject to a *transaction* by a *dual agent* does not in and of itself constitute action that is adverse or detrimental to the *buyer* or create a conflict of interest.

(b) The representation of more than one *buyer* by different *licensees* affiliated with the same broker in competing *transactions* involving the same property does not in and of itself constitute action that is adverse or detrimental to the *buyers* or create a conflict of interest.

## 7 Duration of Agency Relationship

(1) The *agency relationships* set forth in this chapter commence at the time that the *licensee* undertakes to provide *real estate brokerage services* to a *principal* and continue until the earliest of the following:

- (a) Completion of performance by the *licensee*;
- (b) Expiration of the term agreed upon by the parties;
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) 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.

(2) Except as otherwise agreed to in writing, a *licensee* owes no further duty after termination of the *agency relationship*, other than the duties of:

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing *confidential information*.

## 8 Compensation

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

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

(3) A *seller* may agree that a *seller's agent* may share with another broker the compensation paid by the *seller*.

(4) A *buyer* may agree that a *buyer's agent* may share with another broker the compensation paid by the *buyer*.

(5) A broker 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*.

(6) A *buyer's agent* or *dual agent* may receive compensation based on the purchase price without breaching any duty to the *buyer*.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a *licensee* to sell or purchase real estate for compensation or a commission be in writing and signed by the *seller* or *buyer*.

## 9 Vicarious Liability

(1) A *principal* is not liable for an act, error or omission by an *agent* or *subagent* of the *principal* arising out of an *agency relationship*:

(a) Unless the *principal* participated in or authorized the act, error or omission, or

(b) Except to the extent that: (i) The *principal* benefited from the act, error or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the *agent* or *subagent*.

(2) A *licensee* is not liable for an act, error or omission of a *subagent* under this chapter, unless the *licensee* participated

in or authorized the act, error or omission. This subsection does not limit the liability of a real estate broker for an act, error or omission by an associate real estate broker or real estate salesperson licensed to that broker.

## 10 Imputed Knowledge and Notice

(1) Unless otherwise agreed to in writing, a *principal* does not have knowledge or notice of any facts known by an *agent* or *subagent* of the *principal* that are not actually known by the *principal*.

(2) Unless otherwise agreed 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.

## 11 Interpretation

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an *agent* to a *principal*, to the extent inconsistent with this chapter. The common law continues 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.