

SENATE BILL REPORT

2EHB 1659

As Reported By Senate Committee On:
Labor, Commerce & Trade, February 20, 1996

Title: An act relating to real estate brokerage relationships.

Brief Description: Regulating real estate brokerage relationships.

Sponsors: Representatives Mielke, Quall, Crouse, Costa, Kremen and Cooke.

Brief History:

Committee Activity: Labor, Commerce & Trade: 2/15/96, 2/20/96 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

Majority Report: Do pass.

Signed by Senators Pelz, Chair; Heavey, Vice Chair; Deccio, Franklin, Fraser, Newhouse and Wojahn.

Staff: Erika Lim (786-7488)

Background: The relationship between a real estate licensee and a buyer, seller, landlord, or tenant is governed by the common law of agency. Agency is an agreed-upon relationship between at least two parties in which a principal authorizes an agent to act on her or his behalf. In return, the agent owes a number of duties to the principal.

The duties owed by an agent in a real estate transaction have evolved through the court system over time. There is no "standard" set of duties, although an agent generally owes the duties of reasonable skill and care, loyalty, honesty, disclosure, confidentiality, and accounting.

In some real estate transactions, there may be confusion over which party an agent represents. There may also be confusion over what duties are owed in situations in which a seller's agent and a buyer's agent are both licensed to the same broker.

The common law of agency imposes vicarious liability and imputed knowledge between an agent and a principal. In other words, a principal is liable for the acts, errors or omissions of her or his agent, and knowledge of or notice to an agent constitutes knowledge of or notice to a principal.

Summary of Bill: The agency relationship between principals and licensees in real estate transactions is established in statute.

A licensee owes certain non-waivable duties regardless of who the licensee represents. These duties include the exercise of reasonable skill and care, honesty, good faith, disclosure, and accounting for money and property. A licensee must also provide a pamphlet

in a prescribed form on the law of real estate agency before any written agreements are signed. This pamphlet must have a separate cover sheet containing a title and a table of contents, and a copy of sections 1 through 12 of this bill must be attached.

Sellers' and buyers' agents have additional duties. A seller's agent owes the non-waivable duties to be loyal, to disclose conflicts of interest, to advise the seller to seek expert advice on matters beyond the agent's expertise, and to not disclose confidential information. Unless otherwise agreed in writing, a seller's agent also owes a duty to make a good faith and continuous effort to find a buyer. A buyer's agent owes the non-waivable duties to be loyal, to disclose conflicts of interest, to advise the buyer to seek expert advice on matters beyond the agent's expertise, and to not disclose confidential information. Unless otherwise agreed in writing, a buyer's agent also owes a duty to make a good faith and continuous effort to find a property.

A licensee who works with a buyer is presumed to be the buyer's agent unless the licensee has a written agency agreement with the seller, a written subagency agreement with the seller's agent, or a written agency agreement with both the buyer and the seller; the licensee is the seller; or the parties agree otherwise in writing.

A licensee may act as a dual agent only with the written consent of both parties. There are additional non-waivable duties owed by dual agents. These duties include the duty to take no action adverse or detrimental to either party, to disclose conflicts of interest, to advise the parties to seek expert advice on matters beyond the agent's expertise, and to not disclose confidential information. Unless otherwise agreed in writing, a dual agent also owes a duty to make a good faith and continuous effort to either find a buyer for a seller's property or a property for a buyer.

An agency relationship starts when a licensee provides services to a principal and ends at the completion of the licensee's performance, expiration of the agreed-upon term, or mutual agreement. After the agency relationship ends, the licensee owes no further duties except to account for all monies and property received and to not disclose confidential information.

The payment of compensation does not necessarily establish an agency relationship. A broker may share compensation with cooperating brokers, and a broker may receive compensation from more than one party.

Common law vicarious liability is changed. A principal is not liable for an act, error, or omission by an agent unless the principal participated in or authorized the act, error or omission. However, if the principal benefitted and it is likely that the agent is insolvent, the principal is liable. A licensee is not liable for the acts, errors, or omissions of a subagent unless the licensee authorized or participated in the act, error, or omission. However, this does not limit the liability of a broker for the acts, errors or omissions of an associate broker or sales person licensed to her or him. Common law imputed knowledge is also changed. A principal does not have knowledge or notice of any facts known by an agent that are not actually known by the principal. Also, a licensee does not have knowledge or notice of facts known by a subagent that are not actually known by the licensee. However, this does not limit the knowledge imputed to a broker of any facts known by an associate broker or sales person licensed to her or him.

Common law duties that are inconsistent with the provisions of this bill are superseded. All other common law remains in effect.

A violation of section 3, the non-waivable general duties of a licensee, constitutes a violation of the real estate licensing law and may subject a licensee to disciplinary action by the Department of Licensing.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on January 1, 1997.

Testimony For: Because the law of real estate agency is currently governed by common law, it is difficult for consumers and real estate licensees to know what their duties and responsibilities are. This bill clarifies and codifies existing common law and creates presumptions consistent with consumer expectations. It will also provide consumer protection by requiring disclosures.

Testimony Against: The provisions of this bill will increase the paperwork and the cost of doing business for licensees. The increased paperwork may also frighten consumers away from real property transactions.

Testified: Glen Hudson, WA Assn. of Realtors (pro); Thorn Ward, Century 21 Ocean Shores (con).