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HOUSE BILL 1955

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State of Washington                      55th Legislature                      1997 Regular Session

By Representatives McMorris, Quall, Bush and Hatfield

Read first time 02/14/97. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to real estate brokerage relationships including  
2 different licensees affiliated with the same broker representing  
3 different buyers and sellers in competing transactions involving the  
4 same property, termination of those relationships, and consumer  
5 information about those relationships; amending RCW 18.86.020,  
6 18.86.040, 18.86.050, 18.86.060, 18.86.070, 18.86.080, and 18.86.120;  
7 creating a new section; providing an effective date; and declaring an  
8 emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10            **Sec. 1.** RCW 18.86.020 and 1996 c 179 s 2 are each amended to read  
11 as follows:

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

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

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

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

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

2 (e) Parties agree otherwise in writing after the licensee has  
3 complied with RCW 18.86.030(1)(f).

4 (2) In a transaction in which different licensees affiliated with  
5 the same broker represent different parties, the broker is a dual  
6 agent, and must obtain the written consent of both parties as required  
7 under RCW 18.86.060. In such a case, each licensee shall solely  
8 represent the party with whom the licensee has an agency relationship,  
9 unless all parties agree in writing that both licensees are dual  
10 agents.

11 (3) A licensee may work with a party in separate transactions  
12 pursuant to different relationships, including, but not limited to,  
13 representing a party in one transaction and at the same time not  
14 representing that party in a different transaction involving that  
15 party, if the licensee complies with this chapter in establishing the  
16 relationships for each transaction.

17 **Sec. 2.** RCW 18.86.040 and 1996 c 179 s 4 are each amended to read  
18 as follows:

19 (1) Unless additional duties are agreed to in writing signed by a  
20 seller's agent, the duties of a seller's agent are limited to those set  
21 forth in RCW 18.86.030 and the following, which may not be waived  
22 except as expressly set forth in (e) of this subsection:

23 (a) To be loyal to the seller by taking no action that is adverse  
24 or detrimental to the seller's interest in a transaction;

25 (b) To timely disclose to the seller any conflicts of interest;

26 (c) To advise the seller to seek expert advice on matters relating  
27 to the transaction that are beyond the agent's expertise;

28 (d) Not to disclose any confidential information from or about the  
29 seller, except under subpoena or court order, even after termination of  
30 the agency relationship; and

31 (e) Unless otherwise agreed to in writing after the seller's agent  
32 has complied with RCW 18.86.030(1)(f), to make a good faith and  
33 continuous effort to find a buyer for the property; except that a  
34 seller's agent is not obligated to seek additional offers to purchase  
35 the property while the property is subject to an existing contract for  
36 sale.

37 (2) ~~((A seller's agent may show alternative properties not owned by  
38 the seller to prospective buyers and may list competing properties for~~

1 ~~sale without breaching any duty to the seller))~~ (a) Showing properties  
2 not owned by the seller to prospective buyers or listing competing  
3 properties for sale does not in and of itself breach the duty of  
4 loyalty to the seller or create a conflict of interest.

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

9 **Sec. 3.** RCW 18.86.050 and 1996 c 179 s 5 are each amended to read  
10 as follows:

11 (1) Unless additional duties are agreed to in writing signed by a  
12 buyer's agent, the duties of a buyer's agent are limited to those set  
13 forth in RCW 18.86.030 and the following, which may not be waived  
14 except as expressly set forth in (e) of this subsection:

15 (a) To be loyal to the buyer by taking no action that is adverse or  
16 detrimental to the buyer's interest in a transaction;

17 (b) To timely disclose to the buyer any conflicts of interest;

18 (c) To advise the buyer to seek expert advice on matters relating  
19 to the transaction that are beyond the agent's expertise;

20 (d) Not to disclose any confidential information from or about the  
21 buyer, except under subpoena or court order, even after termination of  
22 the agency relationship; and

23 (e) Unless otherwise agreed to in writing after the buyer's agent  
24 has complied with RCW 18.86.030(1)(f), to make a good faith and  
25 continuous effort to find a property for the buyer; except that a  
26 buyer's agent is not obligated to: (i) Seek additional properties to  
27 purchase while the buyer is a party to an existing contract to  
28 purchase; or (ii) show properties as to which there is no written  
29 agreement to pay compensation to the buyer's agent.

30 ~~(2) ((A buyer's agent may show properties in which the buyer is~~  
31 ~~interested to other prospective buyers without breaching any duty to~~  
32 ~~the buyer))~~ (a) Showing property in which a buyer is interested to  
33 other prospective buyers does not in and of itself breach the duty of  
34 loyalty to the buyer or create a conflict of interest.

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

1       **Sec. 4.** RCW 18.86.060 and 1996 c 179 s 6 are each amended to read  
2 as follows:

3       (1) A licensee may act as a dual agent only with the written  
4 consent of both parties to the transaction after the dual agent has  
5 complied with RCW 18.86.030(1)(f), which consent must include a  
6 statement of the terms of compensation.

7       (2) Unless additional duties are agreed to in writing signed by a  
8 dual agent, the duties of a dual agent are limited to those set forth  
9 in RCW 18.86.030 and the following, which may not be waived except as  
10 expressly set forth in (e) and (f) of this subsection:

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

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

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

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

19       (e) Unless otherwise agreed to in writing after the dual agent has  
20 complied with RCW 18.86.030(1)(f), to make a good faith and continuous  
21 effort to find a buyer for the property; except that a dual agent is  
22 not obligated to seek additional offers to purchase the property while  
23 the property is subject to an existing contract for sale; and

24       (f) Unless otherwise agreed to in writing after the dual agent has  
25 complied with RCW 18.86.030(1)(f), to make a good faith and continuous  
26 effort to find a property for the buyer; except that a dual agent is  
27 not obligated to: (i) Seek additional properties to purchase while the  
28 buyer is a party to an existing contract to purchase; or (ii) show  
29 properties as to which there is no written agreement to pay  
30 compensation to the dual agent.

31       (3) ~~((A dual agent may show alternative properties not owned by the  
32 seller to prospective buyers and may list competing properties for sale  
33 without breaching any duty to the seller))~~ (a) Showing properties not  
34 owned by the seller to prospective buyers or listing competing  
35 properties for sale does not in and of itself constitute action that is  
36 adverse or detrimental to the seller or create a conflict of interest.

37       (b) Representation of more than one seller by different licensees  
38 affiliated with the same broker in competing transactions involving the

1 same buyer does not in and of itself constitute action that is adverse  
2 or detrimental to the sellers or create a conflict of interest.

3 ~~((A dual agent may show properties in which the buyer is~~  
4 ~~interested to other prospective buyers without breaching any duty to~~  
5 ~~the buyer)) (a) Showing property in which a buyer is interested to~~  
6 other prospective buyers, or presenting additional offers to purchase  
7 property while the property is subject to a transaction, does not in  
8 and of itself constitute action that is adverse or detrimental to the  
9 buyer or create a conflict of interest.

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

14 **Sec. 5.** RCW 18.86.070 and 1996 c 179 s 7 are each amended to read  
15 as follows:

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

- 20 (a) Completion of performance by the licensee;
- 21 (b) Expiration of the term agreed upon by the parties; ~~((or))~~
- 22 (c) Termination of the relationship by mutual agreement of the  
23 parties; or
- 24 (d) Termination of the relationship by notice from either party to  
25 the other, if such termination does not affect the contractual rights  
26 of either party.

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

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

33 **Sec. 6.** RCW 18.86.080 and 1996 c 179 s 8 are each amended to read  
34 as follows:

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

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

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

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

8 (5) A broker may be compensated by more than one party for real  
9 estate brokerage services in a real estate transaction, if those  
10 parties consent in writing at or before the time of signing an offer in  
11 the transaction.

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

14 (7) Nothing contained in this chapter obligates a buyer or seller  
15 to pay compensation to a licensee, unless the buyer or seller has  
16 entered into ((a written)) an agreement with the licensee, enforceable  
17 under applicable law, specifying the terms of such compensation.

18 **Sec. 7.** RCW 18.86.120 and 1996 c 179 s 13 are each amended to read  
19 as follows:

20 The pamphlet required under RCW 18.86.030(1)(f) shall consist of  
21 the entire text of RCW 18.86.010 through 18.86.030((7)) and 18.86.040  
22 through 18.86.110((7 and 18.86.900)) with a separate cover page. The  
23 pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in  
24 print no smaller than 10-point type, the cover page shall be in print  
25 no smaller than 12-point type, and the title of the cover page "The Law  
26 of Real Estate Agency" shall be in print no smaller than 18-point type.  
27 The cover page shall be in the following form:

28 **The Law of Real Estate Agency**

29 This pamphlet describes your legal rights  
30 in dealing with a real estate broker or  
31 salesperson. Please read it carefully  
32 before signing any documents.

33 The following is only a brief summary of the attached law:

34 Sec. 1. Definitions. Defines the specific terms used in the  
35 law.

36 Sec. 2. Relationships between Licensees and the Public. States  
37 that a licensee who works with a buyer or tenant represents

1 that buyer or tenant--unless the licensee is the listing agent,  
2 a seller's subagent, a dual agent, the seller personally or the  
3 parties agree otherwise. Also states that in a transaction  
4 involving two different licensees affiliated with the same  
5 broker, the broker is a dual agent and each licensee solely  
6 represents his or her client--unless the parties agree in  
7 writing that both licensees are dual agents.

8 Sec. 3. Duties of a Licensee Generally. Prescribes the duties  
9 that are owed by all licensees, regardless of who the licensee  
10 represents. Requires disclosure of the licensee's agency  
11 relationship in a specific transaction.

12 Sec. 4. Duties of a Seller's Agent. Prescribes the additional  
13 duties of a licensee representing the seller or landlord only.

14 Sec. 5. Duties of a Buyer's Agent. Prescribes the additional  
15 duties of a licensee representing the buyer or tenant only.

16 Sec. 6. Duties of a Dual Agent. Prescribes the additional  
17 duties of a licensee representing both parties in the same  
18 transaction, and requires the written consent of both parties  
19 to the licensee acting as a dual agent.

20 Sec. 7. Duration of Agency Relationship. Describes when an  
21 agency relationship begins and ends. Provides that the duties  
22 of accounting and confidentiality continue after the  
23 termination of an agency relationship.

24 Sec. 8. Compensation. Allows brokers to share compensation  
25 with cooperating brokers. States that payment of compensation  
26 does not necessarily establish an agency relationship. Allows  
27 brokers to receive compensation from more than one party in a  
28 transaction with the parties' consent.

29 Sec. 9. Vicarious Liability. Eliminates the common law  
30 liability of a party for the conduct of the party's agent or  
31 subagent, unless the agent or subagent is insolvent. Also  
32 limits the liability of a broker for the conduct of a subagent  
33 associated with a different broker.

34 Sec. 10. Imputed Knowledge and Notice. Eliminates the common  
35 law rule that notice to or knowledge of an agent constitutes  
36 notice to or knowledge of the principal.

37 Sec. 11. Interpretation. This law replaces the fiduciary  
38 duties owed by an agent to a principal under the common law, to  
39 the extent that it conflicts with the common law.

1       (~~Sec. 12. Effective Date. This law generally takes effect on~~  
2       ~~January 1, 1997.~~)

3       NEW SECTION.   **Sec. 8.** Amendments set forth in sections 1 through  
4 6 of this act are not required to be included in the pamphlet on the  
5 law of real estate agency required under RCW 18.86.030(1)(f) and  
6 18.86.120 until January 1, 1998.

7       NEW SECTION.   **Sec. 9.** Sections 1 through 6 of this act are  
8 necessary for the immediate preservation of the public peace, health,  
9 or safety, or support of the state government and its existing public  
10 institutions, and take effect immediately.

11       NEW SECTION.   **Sec. 10.** Section 7 of this act takes effect January  
12 1, 1998.

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