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**SUBSTITUTE HOUSE BILL 2059**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** House Consumer Protection & Business (originally sponsored by Representatives Gregerson, Leavitt, Morgan, Vick, Gilday, Rude, Chapman, Barkis, and Lekanoff)

AN ACT Relating to real estate agency law, but only to clarify that the statutory duties of real estate brokers apply to all parties and prohibiting the delivery of buyer unfair practice letters to the seller of residential real estate; and amending RCW 18.86.010 and 18.86.030.

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

**Sec.**  RCW 18.86.010 and 2013 c 58 s 1 are each amended to read as follows:

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 real estate firm and a buyer and/or seller relating to the performance of real estate brokerage services.

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

(3) "Broker" means broker, managing broker, and designated broker, collectively, as defined in chapter 18.85 RCW, 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 when the transaction or business includes an interest in real property.

(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.

(6) "Buyer unfair practice letter" means a written communication or image from a buyer, or someone acting on a buyer's behalf, reasonably interpreted to be intended to persuade a seller of residential real estate to sell to a buyer because of a status, trait, class, or characteristic identified in RCW 49.60.222 or any related law.

(7) "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)~~)) (8) "Confidential information" means information from or concerning a principal of a broker that:

(a) Was acquired by the broker 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)~~)) (9) "Dual agent" means a broker who has entered into an agency relationship with both the buyer and seller in the same transaction.

((~~(9)~~)) (10) "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)~~)) (11) "Principal" means a buyer or a seller who has entered into an agency relationship with a broker.

((~~(11)~~)) (12) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

((~~(12)~~)) (13) "Real estate firm" or "firm" have the same meaning as defined in chapter 18.85 RCW.

((~~(13)~~)) (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.

((~~(14)~~)) (15) "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.

((~~(15)~~)) (16) "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.

((~~(16)~~)) (17) "Subagent" means a broker who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the broker in writing to appoint subagents.

**Sec.**  RCW 18.86.030 and 2013 c 58 s 3 are each amended to read as follows:

(1) Regardless of whether a broker is an agent, ((~~the~~)) a broker ((~~owes to all parties to whom the broker~~)) who renders real estate brokerage services owes the following duties to all parties, 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, except that a broker shall not present a buyer unfair practice letter or other written communication related to a prospective transaction that a seller instructs a broker in writing not to present;

(d) To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the broker 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 broker renders real estate brokerage services, before the party signs an agency agreement with the broker, signs an offer in a real estate transaction handled by the broker, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2) (e) or (f), whichever occurs earliest; ((~~and~~))

(g) To disclose in writing to all parties to whom the broker renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the broker, whether the broker 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((~~.~~))"; and

(h) To refrain from presenting or facilitating the provision of a buyer unfair practice letter to a seller.

(2) Unless otherwise agreed, a broker 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 broker to be reliable.

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