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HOUSE BILL 2689

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Goodman, Maxwell, Kenney, and Kelley

Read first time 01/12/10. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to modifying agency relationship provisions to  
2 clarify broker and licensee terms; and amending RCW 18.86.010,  
3 18.86.020, 18.86.040, 18.86.050, 18.86.060, 18.86.080, 18.86.090,  
4 18.86.100, and 18.86.120.

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

6            **Sec. 1.** RCW 18.86.010 and 1996 c 179 s 1 are each amended to read  
7 as follows:

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

10           (1) "Agency relationship" means the agency relationship created  
11 under this chapter or by written agreement between a licensee and a  
12 buyer and/or seller relating to the performance of real estate  
13 brokerage services by the licensee.

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

16           (3) "Business opportunity" means and includes a business, business  
17 opportunity, and goodwill of an existing business, or any one or  
18 combination thereof.

1 (4) "Buyer" means an actual or prospective purchaser in a real  
2 estate transaction, or an actual or prospective tenant in a real estate  
3 rental or lease transaction, as applicable.

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

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

9 (a) Was acquired by the licensee during the course of an agency  
10 relationship with the principal;

11 (b) The principal reasonably expects to be kept confidential;

12 (c) The principal has not disclosed or authorized to be disclosed  
13 to third parties;

14 (d) Would, if disclosed, operate to the detriment of the principal;  
15 and

16 (e) The principal personally would not be obligated to disclose to  
17 the other party.

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

20 (8) "Licensee" means a (~~real estate~~) broker, (~~associate real~~  
21 ~~estate~~) managing broker, or (~~real estate salesperson~~) designated  
22 broker, as those terms are defined in chapter 18.85 RCW.

23 (9) "Material fact" means information that substantially adversely  
24 affects the value of the property or a party's ability to perform its  
25 obligations in a real estate transaction, or operates to materially  
26 impair or defeat the purpose of the transaction. The fact or suspicion  
27 that the property, or any neighboring property, is or was the site of  
28 a murder, suicide or other death, rape or other sex crime, assault or  
29 other violent crime, robbery or burglary, illegal drug activity,  
30 gang-related activity, political or religious activity, or other act,  
31 occurrence, or use not adversely affecting the physical condition of or  
32 title to the property is not a material fact.

33 (10) "Principal" means a buyer or a seller who has entered into an  
34 agency relationship with a licensee.

35 (11) "Real estate brokerage services" means the rendering of  
36 services for which a real estate license is required under chapter  
37 18.85 RCW.

1 (12) "Real estate transaction" or "transaction" means an actual or  
2 prospective transaction involving a purchase, sale, option, or exchange  
3 of any interest in real property or a business opportunity, or a lease  
4 or rental of real property. For purposes of this chapter, a  
5 prospective transaction does not exist until a written offer has been  
6 signed by at least one of the parties.

7 (13) "Seller" means an actual or prospective seller in a real  
8 estate transaction, or an actual or prospective landlord in a real  
9 estate rental or lease transaction, as applicable.

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

13 (15) "Subagent" means a licensee who is engaged to act on behalf of  
14 a principal by the principal's agent where the principal has authorized  
15 the agent in writing to appoint subagents.

16 **Sec. 2.** RCW 18.86.020 and 1997 c 217 s 1 are each amended to read  
17 as follows:

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

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

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

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

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

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

29 (2) In a transaction in which different licensees affiliated with  
30 the same designated broker represent different parties, the designated  
31 broker is a dual agent, and must obtain the written consent of both  
32 parties as required under RCW 18.86.060. In such a case, each licensee  
33 shall solely represent the party with whom the ((~~licensee~~)) broker or  
34 managing broker has an agency relationship, unless all parties agree in  
35 writing that both licensees are dual agents.

36 (3) A licensee may work with a party in separate transactions  
37 pursuant to different relationships, including, but not limited to,

1 representing a party in one transaction and at the same time not  
2 representing that party in a different transaction involving that  
3 party, if the licensee complies with this chapter in establishing the  
4 relationships for each transaction.

5 **Sec. 3.** RCW 18.86.040 and 1997 c 217 s 2 are each amended to read  
6 as follows:

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

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

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

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

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

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

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

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

33 **Sec. 4.** RCW 18.86.050 and 1997 c 217 s 3 are each amended to read  
34 as follows:

35 (1) Unless additional duties are agreed to in writing signed by a

1 buyer's agent, the duties of a buyer's agent are limited to those set  
2 forth in RCW 18.86.030 and the following, which may not be waived  
3 except as expressly set forth in (e) of this subsection:

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

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

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

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

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

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

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

28 **Sec. 5.** RCW 18.86.060 and 1997 c 217 s 4 are each amended to read  
29 as follows:

30 (1) Notwithstanding any other provision of this chapter, a licensee  
31 may act as a dual agent only with the written consent of both parties  
32 to the transaction after the dual agent has complied with RCW  
33 18.86.030(1)(f), which consent must include a statement of the terms of  
34 compensation.

35 (2) Unless additional duties are agreed to in writing signed by a  
36 dual agent, the duties of a dual agent are limited to those set forth

1 in RCW 18.86.030 and the following, which may not be waived except as  
2 expressly set forth in (e) and (f) of this subsection:

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

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

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

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

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

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

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

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

32 (4)(a) The showing of property in which a buyer is interested to  
33 other prospective buyers or the presentation of additional offers to  
34 purchase property while the property is subject to a transaction by a  
35 dual agent does not in and of itself constitute action that is adverse  
36 or detrimental to the buyer or create a conflict of interest.

37 (b) The representation of more than one buyer by different  
38 licensees affiliated with the same designated broker in competing

1 transactions involving the same property does not in and of itself  
2 constitute action that is adverse or detrimental to the buyers or  
3 create a conflict of interest.

4 **Sec. 6.** RCW 18.86.080 and 1997 c 217 s 6 are each amended to read  
5 as follows:

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

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

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

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

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

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

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

26 **Sec. 7.** RCW 18.86.090 and 1996 c 179 s 9 are each amended to read  
27 as follows:

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

31 (a) Unless the principal participated in or authorized the act,  
32 error, or omission; or

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

1 (2) A licensee is not liable for an act, error, or omission of a  
2 subagent under this chapter, unless the licensee participated in or  
3 authorized the act, error or omission. This subsection does not limit  
4 the liability of a ((~~real-estate~~)) designated broker for an act, error,  
5 or omission by ((~~an-associate-real-estate~~)) a broker or ((~~real-estate~~  
6 ~~salesperson~~)) managing broker licensed to that designated broker.

7 **Sec. 8.** RCW 18.86.100 and 1996 c 179 s 10 are each amended to read  
8 as follows:

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

12 (2) Unless otherwise agreed to in writing, a licensee does not have  
13 knowledge or notice of any facts known by a subagent that are not  
14 actually known by the licensee. This subsection does not limit the  
15 knowledge imputed to a ((~~real-estate~~)) designated broker of any facts  
16 known by ((~~an-associate-real-estate~~)) a broker or ((~~real-estate~~  
17 ~~salesperson~~)) managing broker licensed to such designated broker.

18 **Sec. 9.** RCW 18.86.120 and 1997 c 217 s 7 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 and 18.86.040  
22 through 18.86.110 with a separate cover page. The pamphlet shall be 8  
23 1/2 by 11 inches in size, the text shall be in print no smaller than  
24 10-point type, the cover page shall be in print no smaller than 12-  
25 point type, and the title of the cover page "The Law of Real Estate  
26 Agency" shall be in print no smaller than 18-point type. The cover  
27 page shall be in the following form:

28 **The Law of Real Estate Agency**

29 This pamphlet describes your legal rights in dealing  
30 with a real estate ((~~broker or salesperson~~)) licensee.

31 Please read it carefully before signing any documents.

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



1       Sec. 1. Definitions. Defines the specific terms used in the  
2       law.

3       Sec. 2. Relationships between Licensees and the Public. States  
4       that a licensee who works with a buyer or tenant represents  
5       that buyer or tenant--unless the licensee is the listing agent,  
6       a seller's subagent, a dual agent, the seller personally or the  
7       parties agree otherwise. Also states that in a transaction  
8       involving two different licensees affiliated with the same  
9       designated broker, the designated broker is a dual agent and  
10      each ((licensee)) broker or managing broker solely represents  
11      his or her client--unless the parties agree in writing that  
12      both licensees are dual agents.

13      Sec. 3. Duties of a Licensee Generally. Prescribes the duties  
14      that are owed by all licensees, regardless of who the licensee  
15      represents. Requires disclosure of the licensee's agency  
16      relationship in a specific transaction.

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

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

21      Sec. 6. Duties of a Dual Agent. Prescribes the additional  
22      duties of a licensee representing both parties in the same  
23      transaction, and requires the written consent of both parties  
24      to the licensee acting as a dual agent.

25      Sec. 7. Duration of Agency Relationship. Describes when an  
26      agency relationship begins and ends. Provides that the duties  
27      of accounting and confidentiality continue after the  
28      termination of an agency relationship.

29      Sec. 8. Compensation. Allows designated brokers to share  
30      compensation with cooperating designated brokers. States that  
31      payment of compensation does not necessarily establish an  
32      agency relationship. Allows designated brokers to receive  
33      compensation from more than one party in a transaction with the  
34      parties' consent.

35      Sec. 9. Vicarious Liability. Eliminates the common law  
36      liability of a party for the conduct of the party's agent or

1 subagent, unless the agent or subagent is insolvent. Also  
2 limits the liability of a designated broker for the conduct of  
3 a subagent associated with a different designated broker.

4 Sec. 10. Imputed Knowledge and Notice. Eliminates the common  
5 law rule that notice to or knowledge of an agent constitutes  
6 notice to or knowledge of the principal.

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

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