
SENATE BILL 5352

State of Washington 63rd Legislature 2013 Regular Session

By Senators Holmquist Newbry, Conway, and Hewitt

Read first time 01/28/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the real estate agency relationship; and
2 amending RCW 18.86.010, 18.86.020, 18.86.030, 18.86.031, 18.86.040,
3 18.86.050, 18.86.060, 18.86.070, 18.86.080, 18.86.090, 18.86.100,
4 18.86.110, 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)) real
12 estate firm and a buyer and/or seller relating to the performance of
13 real estate brokerage services ((by the licensee)).

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

16 (3) "Broker" means broker, managing broker, and designated broker,
17 collectively, as defined in chapter 18.85 RCW, unless the context
18 requires the terms to be considered separately.

1 (4) "Business opportunity" means and includes a business, business
2 opportunity, and goodwill of an existing business, or any one or
3 combination thereof when the transaction or business includes an
4 interest in real property.

5 ~~((+4))~~ (5) "Buyer" means an actual or prospective purchaser in a
6 real estate transaction, or an actual or prospective tenant in a real
7 estate rental or lease transaction, as applicable.

8 ~~((+5))~~ (6) "Buyer's agent" means a ~~((licensee))~~ broker who has
9 entered into an agency relationship with only the buyer in a real
10 estate transaction, and includes subagents engaged by a buyer's agent.

11 ~~((+6))~~ (7) "Confidential information" means information from or
12 concerning a principal of a ~~((licensee))~~ broker that:

13 (a) Was acquired by the ~~((licensee))~~ broker during the course of an
14 agency relationship with the principal;

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

16 (c) The principal has not disclosed or authorized to be disclosed
17 to third parties;

18 (d) Would, if disclosed, operate to the detriment of the principal;
19 and

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

22 ~~((+7))~~ (8) "Dual agent" means a ~~((licensee))~~ broker who has
23 entered into an agency relationship with both the buyer and seller in
24 the same transaction.

25 ~~((+8)) "Licensee" means a real estate broker, associate real estate~~
26 ~~broker, or real estate salesperson, as those terms are defined in~~
27 ~~chapter 18.85 RCW.))~~

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

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

3 (11) "Real estate brokerage services" means the rendering of
4 services for which a real estate license is required under chapter
5 18.85 RCW.

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

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

14 (~~(13)~~) (14) "Seller" means an actual or prospective seller in a
15 real estate transaction, or an actual or prospective landlord in a real
16 estate rental or lease transaction, as applicable.

17 (~~(14)~~) (15) "Seller's agent" means a (~~(licensee)~~) broker who has
18 entered into an agency relationship with only the seller in a real
19 estate transaction, and includes subagents engaged by a seller's agent.

20 (~~(15)~~) (16) "Subagent" means a (~~(licensee)~~) broker who is engaged
21 to act on behalf of a principal by the principal's agent where the
22 principal has authorized the (~~(agent)~~) broker in writing to appoint
23 subagents.

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

26 (1) A (~~(licensee)~~) broker who performs real estate brokerage
27 services for a buyer is a buyer's agent unless the:

28 (a) (~~(Licensee has entered into)~~) Broker's firm has appointed the
29 broker to represent the seller in a written agency agreement (~~(with)~~)
30 between the firm and the seller, in which case the (~~(licensee)~~) broker
31 is a seller's agent;

32 (b) (~~(Licensee)~~) Broker has entered into a subagency agreement with
33 the seller's agent's firm, in which case the (~~(licensee)~~) broker is a
34 seller's agent;

35 (c) (~~(Licensee has entered into)~~) Broker's firm has appointed the
36 broker to represent the seller pursuant to a written agency agreement
37 (~~(with both parties)~~) between the firm and the seller, and the broker's

1 firm has appointed the broker to represent the buyer pursuant to a
2 written agency agreement between the firm and the buyer, in which case
3 the ((licensee)) broker is a dual agent;

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

5 (e) Parties agree otherwise in writing after the ((licensee))
6 broker has complied with RCW 18.86.030(1)(f).

7 (2) In a transaction in which different ((licensees)) brokers
8 affiliated with the same ((broker)) firm represent different parties,
9 the ((broker)) firm's designated broker and any managing broker
10 responsible for the supervision of both brokers, is a dual agent, and
11 must obtain the written consent of both parties as required under RCW
12 18.86.060. In such ((a)) case, each ((licensee)) of the brokers shall
13 solely represent the party with whom the ((licensee)) broker has an
14 agency relationship, unless all parties agree in writing that ((both
15 ~~licensees are~~)) the broker is a dual agent((s)).

16 (3) A ((licensee)) broker may work with a party in separate
17 transactions pursuant to different relationships, including, but not
18 limited to, representing a party in one transaction and at the same
19 time not representing that party in a different transaction involving
20 that party, if the ((licensee)) broker complies with this chapter in
21 establishing the relationships for each transaction.

22 **Sec. 3.** RCW 18.86.030 and 1996 c 179 s 3 are each amended to read
23 as follows:

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

28 (a) To exercise reasonable skill and care;

29 (b) To deal honestly and in good faith;

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

35 (d) To disclose all existing material facts known by the
36 ((licensee)) broker and not apparent or readily ascertainable to a

1 party; provided that this subsection shall not be construed to imply
2 any duty to investigate matters that the ((~~licensee~~)) broker has not
3 agreed to investigate;

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

6 (f) To provide a pamphlet on the law of real estate agency in the
7 form prescribed in RCW 18.86.120 to all parties to whom the
8 ((~~licensee~~)) broker renders real estate brokerage services, before the
9 party signs an agency agreement with the ((~~licensee~~)) broker, signs an
10 offer in a real estate transaction handled by the ((~~licensee~~)) broker,
11 consents to dual agency, or waives any rights, under RCW
12 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2) (e)
13 or (f), whichever occurs earliest; and

14 (g) To disclose in writing to all parties to whom the ((~~licensee~~))
15 broker renders real estate brokerage services, before the party signs
16 an offer in a real estate transaction handled by the ((~~licensee~~))
17 broker, whether the ((~~licensee~~)) broker represents the buyer, the
18 seller, both parties, or neither party. The disclosure shall be set
19 forth in a separate paragraph entitled "Agency Disclosure" in the
20 agreement between the buyer and seller or in a separate writing
21 entitled "Agency Disclosure."

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

28 **Sec. 4.** RCW 18.86.031 and 1996 c 179 s 14 are each amended to read
29 as follows:

30 A violation of RCW 18.86.030 is a violation of RCW ((~~18.85.230~~))
31 18.85.361.

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

34 (1) Unless additional duties are agreed to in writing signed by a
35 seller's agent, the duties of a seller's agent are limited to those set

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

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

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

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

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

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

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

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

26 **Sec. 6.** RCW 18.86.050 and 1997 c 217 s 3 are each amended to read
27 as follows:

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

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

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

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

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

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

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

15 (b) The representation of more than one buyer by different
16 (~~licensees~~) brokers affiliated with the same (~~broker~~) firm in
17 competing transactions involving the same property does not in and of
18 itself breach the duty of loyalty to the buyer(~~s~~) or create a
19 conflict of interest.

20 **Sec. 7.** RCW 18.86.060 and 1997 c 217 s 4 are each amended to read
21 as follows:

22 (1) Notwithstanding any other provision of this chapter, a
23 (~~licensee~~) broker may act as a dual agent only with the written
24 consent of both parties to the transaction after the dual agent has
25 complied with RCW 18.86.030(1)(f), which consent must include a
26 statement of the terms of compensation.

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

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

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

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

36 (d) Not to disclose any confidential information from or about

1 either party, except under subpoena or court order, even after
2 termination of the agency relationship;

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

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

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

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

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

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

34 **Sec. 8.** RCW 18.86.070 and 1997 c 217 s 5 are each amended to read
35 as follows:

36 (1) The agency relationships set forth in this chapter commence at

1 the time that the ((~~licensee~~)) broker undertakes to provide real estate
2 brokerage services to a principal and continue until the earliest of
3 the following:

4 (a) Completion of performance by the ((~~licensee~~)) broker;

5 (b) Expiration of the term agreed upon by the parties;

6 (c) Termination of the relationship by mutual agreement of the
7 parties; or

8 (d) Termination of the relationship by notice from either party to
9 the other. However, such a termination does not affect the contractual
10 rights of either party.

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

14 (a) Accounting for all moneys and property received during the
15 relationship; and

16 (b) Not disclosing confidential information.

17 **Sec. 9.** RCW 18.86.080 and 1997 c 217 s 6 are each amended to read
18 as follows:

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

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

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

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

29 (5) A ((~~broker~~)) firm may be compensated by more than one party for
30 real estate brokerage services in a real estate transaction, if those
31 parties consent in writing at or before the time of signing an offer in
32 the transaction.

33 (6) A ((~~buyer's agent or dual agent~~)) firm may receive compensation
34 based on the purchase price without breaching any duty to the buyer or
35 seller.

36 (7) Nothing contained in this chapter negates the requirement that

1 an agreement authorizing or employing a (~~licensee~~) broker to sell or
2 purchase real estate for compensation or a commission be in writing and
3 signed by the seller or buyer.

4 **Sec. 10.** RCW 18.86.090 and 1996 c 179 s 9 are each amended to read
5 as follows:

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

9 (a) Unless the principal participated in or authorized the act,
10 error, or omission; or

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

15 (2) A (~~licensee~~) broker is not liable for an act, error, or
16 omission of a subagent under this chapter, unless (~~the licensee~~) that
17 broker participated in or authorized the act, error or omission. This
18 subsection does not limit the liability of a (~~real estate broker~~)
19 firm for an act, error, or omission by (~~an associate real estate~~) a
20 broker (~~or real estate salesperson~~) licensed to (~~that broker~~) the
21 firm.

22 **Sec. 11.** RCW 18.86.100 and 1996 c 179 s 10 are each amended to
23 read as follows:

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

27 (2) Unless otherwise agreed to in writing, a (~~licensee~~) broker
28 does not have knowledge or notice of any facts known by a subagent that
29 are not actually known by the (~~licensee~~) broker. This subsection
30 does not limit the knowledge imputed to (~~a real estate~~) the
31 designated broker or any managing broker responsible for the
32 supervision of the broker of any facts known by (~~an associate real~~
33 ~~estate broker or real estate salesperson licensed to such~~) the broker.

34 **Sec. 12.** RCW 18.86.110 and 1996 c 179 s 11 are each amended to
35 read as follows:

1 The duties under this chapter are statutory duties and not
2 fiduciary duties. This chapter supersedes (~~only the duties of the~~
3 ~~parties under the common law, including~~) the fiduciary duties of an
4 agent to a principal(~~, to the extent inconsistent with this chapter~~)
5 under the common law. The common law continues to apply to the parties
6 in all other respects. This chapter does not affect the duties of a
7 (~~licensee~~) broker while engaging in the authorized or unauthorized
8 practice of law as determined by the courts of this state. This
9 chapter shall be construed broadly.

10 **Sec. 13.** RCW 18.86.120 and 2012 c 185 s 2 are each amended to read
11 as follows:

12 (1) The pamphlet required under RCW 18.86.030(1)(f) shall consist
13 of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040
14 through 18.86.110 with a separate cover page. The pamphlet shall be 8
15 1/2 by 11 inches in size, the text shall be in print no smaller than
16 10-point type, the cover page shall be in print no smaller than 12-
17 point type, and the title of the cover page "The Law of Real Estate
18 Agency" shall be in print no smaller than 18-point type. The cover
19 page shall be in the following form:

20 **The Law of Real Estate Agency**

21 This pamphlet describes your legal rights in dealing
22 with a real estate firm or broker (~~or salesperson~~).
23 Please read it carefully before signing any documents.

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

25 Sec. 1. Definitions. Defines the specific terms used in the
26 law.

27 Sec. 2. Relationships between (~~Licensees~~) Brokers and the
28 Public. (~~States~~) Prescribes that a (~~licensee~~) broker who
29 works with a buyer or tenant represents that buyer or tenant--
30 unless the (~~licensee~~) broker is the listing agent, a seller's
31 subagent, a dual agent, the seller personally or the parties
32 agree otherwise. Also (~~states~~) prescribes that in a
33 transaction involving two different (~~licensees affiliated with~~
34 ~~the same broker, the broker is a dual agent and each licensee~~)

1 brokers licensed to the same real estate firm, the firm's
2 designated broker and any managing broker responsible for the
3 supervision of both brokers, are dual agents and each broker
4 solely represents his or her client--unless the parties agree
5 in writing that both ((licensees)) brokers are dual agents.

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

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

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

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

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

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

31 Sec. 9. Vicarious Liability. Eliminates the ((common-law))
32 liability of a party for the conduct of the party's agent or
33 subagent, unless the principal participated in or benefited
34 from the conduct or the agent or subagent is insolvent. Also
35 limits the liability of a broker for the conduct of a subagent
36 ((associated with a different broker)).

1 Sec. 10. Imputed Knowledge and Notice. Eliminates the common
2 law rule that notice to or knowledge of an agent constitutes
3 notice to or knowledge of the principal.

4 Sec. 11. Interpretation. This law (~~((replaces the))~~) establishes
5 statutory duties which replace common law fiduciary duties owed
6 by an agent to a principal (~~((under the common law, to the~~
7 ~~extent that it conflicts with the common law))~~).

8 Sec. 12. Short Sale. Prescribes an additional duty of a firm
9 representing the seller of owner-occupied real property in a
10 short sale.

11 (2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also
12 include the following disclosure: When the seller of owner-occupied
13 residential real property enters into a listing agreement with a real
14 estate (~~((licensee))~~) firm where the proceeds from the sale may be
15 insufficient to cover the costs at closing, it is the responsibility of
16 the real estate (~~((licensee))~~) firm to disclose to the seller in writing
17 that the decision by any beneficiary or mortgagee, or its assignees, to
18 release its interest in the real property, for less than the amount the
19 borrower owes, does not automatically relieve the seller of the
20 obligation to pay any debt or costs remaining at closing, including
21 fees such as the real estate (~~((licensee's))~~) firm's commission.

22 (b) For the purposes of this subsection, "owner-occupied real
23 property" means real property consisting solely of a single-family
24 residence, a residential condominium unit, or a residential cooperative
25 unit that is the principal residence of the borrower.

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