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**SUBSTITUTE SENATE BILL 5191**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Stanford, Dozier, and Gildon)

AN ACT Relating to reforming the real estate agency law to require written brokerage services agreements, improve consumer disclosures, and provide that certain legal duties of brokers apply to all parties in the transaction; amending RCW 18.86.010, 18.86.020, 18.86.030, 18.86.040, 18.86.050, 18.86.060, 18.86.070, 18.86.080, 18.86.090, 18.86.100, and 18.86.120; and providing an effective date.

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~~)) principal.

(2) "Agent" means a broker who has ((~~entered into~~)) an agency relationship with a ((~~buyer or seller~~)) principal, including the firm's designated broker and any managing broker responsible for the supervision of that broker.

(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) "Brokerage services agreement" or "services agreement" means a written agreement between a real estate firm and principal that appoints a broker to represent the principal as an agent and sets forth the terms required by RCW 18.86.020 and 18.86.080.

(5) "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)~~)) (6) "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)~~)) (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) "Commercial real estate" has the same meaning as in RCW 60.42.005.

(9) "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) "Dual~~)) (10) "Limited dual agent" means a broker who has ((~~entered into~~)) an agency relationship with both the buyer and seller in the same transaction.

((~~(9)~~)) (11) "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)~~)) (12) "Principal" means a buyer or a seller who has ((~~entered into~~)) an agency relationship with a broker.

((~~(11)~~)) (13) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

((~~(12)~~)) (14) "Real estate firm" or "firm" have the same meaning as defined in chapter 18.85 RCW.

((~~(13)~~)) (15) "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~~)) party.

((~~(14)~~)) (16) "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)~~)) (17) "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) "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 18.86.020 and 2013 c 58 s 2 are each amended to read as follows:

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

(a) Broker's firm has appointed the broker to represent the seller pursuant to a ((~~written agency~~)) services agreement between the firm and the seller, in which case the broker is a seller's agent;

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

~~(c)~~)) Broker's firm has appointed the broker to represent the seller pursuant to a ((~~written agency~~)) services agreement between the firm and the seller, and the broker's firm has also appointed the broker to represent the buyer pursuant to a ((~~written agency~~)) services agreement between the firm and the buyer, in which case the appointed broker is a limited dual agent; or

((~~(d)~~)) (c) Broker is the seller or one of the sellers((~~; or~~

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

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

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

(2)(a) A firm must enter into a services agreement with the principal before, or as soon as reasonably practical after, its appointed broker commences rendering real estate brokerage services to, or on behalf of, the principal.

(b) The services agreement must include the following:

(i) The term of the agreement;

(ii) The broker appointed as an agent for the principal;

(iii) Whether the agency relationship is exclusive or nonexclusive;

(iv) Whether the principal consents to the broker appointed as an agent for the principal to act as a limited dual agent, which consent must be separately initialed by the principal and include an acknowledgment from the principal that a limited dual agent may not advocate terms favorable to one principal to the detriment of the other principal and is further limited as set forth in RCW 18.86.060; and

(v) Whether the principal consents to the firm's designated broker and any managing broker responsible for the supervision of the broker appointed as an agent for the principal to act as a limited dual agent in a transaction in which different brokers affiliated with the same firm represent different parties.

(3) A services agreement is not required when a broker performs real estate brokerage services as a buyer's agent solely for commercial real estate.

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

**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 renders real estate brokerage services~~)) the following duties to their principal and to all parties in a transaction, 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;

(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~~)) by RCW 18.86.120 to ((~~all parties~~)):

(i) Any party 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~~)) as soon as reasonably practical but before the party signs a services agreement; and

(ii) Any party not represented by a broker in a transaction before the party signs an offer or as soon as reasonably practical; and

(g) To disclose in writing before the broker's principal signs an offer, or as soon as reasonably practical, but before the parties reach mutual agreement:

(i) Whether the broker represents the buyer as the buyer's agent, the seller as the seller's agent, or both parties((~~, or neither party~~)) as a limited dual agent. The disclosure shall be set forth in a separate paragraph ((~~entitled~~)) titled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing ((~~entitled~~)) titled "Agency Disclosure((~~.~~))"; and

(ii) Any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.

(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.

**Sec.**  RCW 18.86.040 and 2013 c 58 s 5 are each amended to read as follows:

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

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

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

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

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

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

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

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

**Sec.**  RCW 18.86.050 and 2013 c 58 s 6 are each amended to read as follows:

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

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

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

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

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

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

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

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

**Sec.**  RCW 18.86.060 and 2013 c 58 s 7 are each amended to read as follows:

(1) ((~~Notwithstanding any other provision of this chapter, a~~)) A broker may act as a limited dual agent only with the written consent of both parties to the transaction ((~~after the dual agent has complied with RCW 18.86.030(1)(f), which consent must include a statement of the terms of compensation~~)), set forth in the services agreement.

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

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

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

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

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

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

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

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

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

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

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

(5) In a transaction in which different brokers affiliated with the same firm represent different parties, the firm's designated broker, and any managing broker responsible for the supervision of both brokers, is a limited dual agent. In such case, each appointed broker shall solely represent the party with whom the appointed broker has an agency relationship.

**Sec.**  RCW 18.86.070 and 2013 c 58 s 8 are each amended to read as follows:

(1) The agency relationships ((~~set forth in this chapter commence at the time that the broker undertakes to provide real estate brokerage services to a principal and~~)) established pursuant to this chapter continue until the earliest of the following:

(a) Completion of performance by the broker;

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

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

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

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

(a) ((~~Accounting~~)) To account for all moneys and property received during the relationship; and

(b) ((~~Not disclosing~~)) To not disclose confidential information.

**Sec.**  RCW 18.86.080 and 2013 c 58 s 9 are each amended to read as follows:

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

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

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

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

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

(6) A firm may receive compensation based on the purchase price without breaching any duty to the buyer or seller.

(7) ((~~Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a broker to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer.~~)) To receive compensation for rendering real estate brokerage services from any party or firm, a real estate firm must have a services agreement containing the following:

(a) The terms of compensation, including:

(i) The amount the principal agrees to compensate the firm;

(ii) The principal's consent, if any, and any terms of such consent, to compensation sharing between firms and parties; and

(iii) The principal's consent, if any, and any terms of such consent, to compensation of the firm by more than one party;

(b) In a services agreement with a buyer, whether the appointed broker agrees to show the buyer properties if there is no agreement or offer by any party or firm to pay compensation to the firm; and

(c) Any other agreements between the parties.

(8) In lieu of obtaining a services agreement, a broker rendering real estate brokerage services to a buyer solely for commercial real estate may disclose in writing to the buyer, before the buyer signs an offer with regard to such commercial real estate, the sources and amounts of any compensation the broker has or expects to receive from any party in conjunction with such transaction. The disclosure shall be set forth in a separate paragraph titled "Compensation Disclosure" in the agreement between the buyer and seller or in a separate writing titled "Compensation Disclosure."

(9) A firm may receive compensation without a services agreement for the provision of a broker's price opinion, as defined in RCW 18.85.011, or a referral by one firm to another firm if the referring firm provided no real estate brokerage services in the transaction.

**Sec.**  RCW 18.86.090 and 2013 c 58 s 10 are each amended to read as follows:

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

((~~(a)~~)) (1) Unless the principal participated in or authorized the act, error, or omission; or

((~~(b)~~)) (2) Except to the extent that: ((~~(i)~~)) (a) The principal benefited from the act, error, or omission; and ((~~(ii)~~)) (b) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent ((~~or subagent~~)).

((~~(2) A broker is not liable for an act, error, or omission of a subagent under this chapter, unless that broker participated in or authorized the act, error or omission. This subsection does not limit the liability of a firm for an act, error, or omission by a broker licensed to the firm.~~))

**Sec.**  RCW 18.86.100 and 2013 c 58 s 11 are each amended to read as follows:

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

((~~(2) Unless otherwise agreed to in writing, a broker does not have knowledge or notice of any facts known by a subagent that are not actually known by the broker. This subsection does not limit the knowledge imputed to the designated broker or any managing broker responsible for the supervision of the broker of any facts known by the broker.~~))

**Sec.**  RCW 18.86.120 and 2013 c 58 s 13 are each amended to read as follows:

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

|  |
| --- |
| **~~The Law of Real Estate Agency~~** |
| ~~This pamphlet describes your legal rights in dealing with a real estate firm or broker. Please read it carefully before signing any documents.~~ |

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

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

~~Sec. 2. Relationships between Brokers and the Public. Prescribes that a broker who works with a buyer or tenant represents that buyer or tenant—unless the broker is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also prescribes that in a transaction involving two different brokers licensed to the same real estate firm, the firm's designated broker and any managing broker responsible for the supervision of both brokers, are dual agents and each broker solely represents his or her client—unless the parties agree in writing that both brokers are dual agents.~~

~~Sec. 3. Duties of a Broker Generally. Prescribes the duties that are owed by all brokers, regardless of who the broker represents. Requires disclosure of the broker's agency relationship in a specific transaction.~~

~~Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a broker representing the seller or landlord only.~~

~~Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a broker representing the buyer or tenant only.~~

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

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

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

~~Sec. 9. Vicarious Liability. Eliminates the liability of a party for the conduct of the party's agent or subagent, unless the principal participated in or benefited from the conduct or the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent.~~

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

~~Sec. 11. Interpretation. This law establishes statutory duties which replace common law fiduciary duties owed by an agent to a principal.~~

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

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

~~(b) For the purposes of this subsection, "owner~~‑~~occupied real property" means real property consisting solely of a single~~‑~~family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower~~)) be formatted so it can be easily reviewed by a buyer or seller, including a legible font and font size. The pamphlet shall be in the following form:

**Real Estate Brokerage in Washington**

**Introduction**

This pamphlet provides general information about real estate brokerage and summarizes the laws related to real estate brokerage relationships. It describes a real estate broker's duties to the seller/landlord and buyer/tenant. Detailed and complete information about real estate brokerage relationships is available in chapter 18.86 RCW.

If you have any questions about the information in this pamphlet, contact your broker or the designated broker of your broker's firm.

**Licensing and Supervision of Brokers**

To provide real estate brokerage services in Washington, a broker must be licensed under chapter 18.85 RCW and licensed with a real estate firm, which also must be licensed. Each real estate firm has a designated broker who is responsible for supervising the brokers licensed with the firm. Some firms may have branch offices that are supervised by a branch manager and some firms may delegate certain supervisory duties to one or more managing brokers.

The Washington State Department of Licensing is responsible for enforcing all laws and rules relating to the conduct of real estate firms and brokers.

**Agency Relationship**

In an agency relationship, a broker is referred to as an "agent" and the seller/landlord and buyer/tenant is referred to as the "principal." For simplicity, in this pamphlet, seller includes landlord, and buyer includes tenant.

For Sellers

A real estate firm and broker must enter into a written services agreement with a seller to establish an agency relationship. The firm will then appoint one or more brokers to be agents of the seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers are also agents of the seller.

For Buyers

A real estate firm and broker(s) who perform real estate brokerage services for a buyer establish an agency relationship by performing those services. The firm's designated broker and any managing broker responsible for the supervision of that broker are also agents of the buyer. A written services agreement between the buyer and the firm must be entered into before, or as soon as reasonably practical after, a broker begins rendering real estate brokerage services to the buyer.

For both Buyer and Seller - as a Limited Dual Agent

A limited dual agent provides limited representation to both the buyer and the seller in a transaction. Limited dual agency requires the consent of each principal in a written services agreement and may occur in two situations: (1) When the buyer and the seller are represented by the same broker, in which case the broker's designated broker and any managing broker responsible for the supervision of that broker are also limited dual agents; and (2) when the buyer and the seller are represented by different brokers in the same firm, in which case each broker solely represents the principal the broker was appointed to represent, but the broker's designated broker and any managing broker responsible for the supervision of those brokers are limited dual agents.

Duration of Agency Relationship

Once established, an agency relationship continues until the earliest of the following:

(1) Completion of performance by the broker;

(2) Expiration of the term agreed upon by the parties;

(3) Termination of the relationship by mutual agreement of the parties; or

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

**Written Services Agreement**

A written services agreement between the firm and principal must contain the following:

(1) The term (duration) of the agreement;

(2) Name of the broker(s) appointed to act as an agent for the principal;

(3) Whether the agency relationship is exclusive or nonexclusive;

(4) Whether the principal consents to limited dual agency;

(5) The terms of compensation;

(6) In an agreement with a buyer, whether the broker agrees to show a property when there is no agreement or offer by any party or firm to pay compensation to the broker's firm; and

(7) Any other agreements between the parties.

**A Broker's Duties to All Parties**

A broker owes the following duties to all parties in a transaction:

(1) To exercise reasonable skill and care;

(2) To deal honestly and in good faith;

(3) To timely present all written offers, written notices, and other written communications to and from either party;

(4) To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party. A material fact includes information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a transaction, or operates to materially impair or defeat the purpose of the transaction. However, a broker does not have any duty to investigate matters that the broker has not agreed to investigate;

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

(6) To provide this pamphlet to all parties to whom the broker renders real estate brokerage services and to any unrepresented party;

(7) To disclose in writing who the broker represents; and

(8) To disclose in writing any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.

**A Broker's Duties to the Buyer or Seller**

A broker owes the following duties to their principal (either the buyer or seller):

(1) To be loyal to their principal by taking no action that is adverse or detrimental to their principal's interest in a transaction;

(2) To timely disclose to their principal any conflicts of interest;

(3) To advise their principal to seek expert advice on matters relating to the transaction that are beyond the broker's expertise;

(4) To not disclose any confidential information from or about their principal; and

(5) To make a good faith and continuous effort to find a property for the buyer or to find a buyer for the seller's property, until the principal has entered a contract for the purchase or sale of property or as agreed otherwise in writing.

**Limited Dual Agent Duties**

A limited dual agent may not advocate terms favorable to one principal to the detriment of the other principal. A broker, acting as a limited dual agent, owes the following duties to both the buyer and seller:

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

(2) To timely disclose to both principals any conflicts of interest;

(3) To advise both principals to seek expert advice on matters relating to the transaction that are beyond the limited dual agent's expertise;

(4) To not disclose any confidential information from or about either principal; and

(5) To make a good faith and continuous effort to find a property for the buyer and to find a buyer for the seller's property, until the principals have entered a contract for the purchase or sale of property or as agreed otherwise in writing.

**Compensation**

In any real estate transaction, a firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between firms. To receive compensation from any party, a firm must have a written services agreement with the party the firm represents (or provide a "Compensation Disclosure" to the buyer in a transaction for commercial real estate).

A services agreement must contain the following regarding compensation:

(1) The amount the principal agrees to compensate the firm for broker's services as an agent or limited dual agent;

(2) The principal's consent, if any, and any terms of such consent, to compensation sharing between firms and parties; and

(3) The principal's consent, if any, and any terms of such consent, to compensation of the firm by more than one party.

**Short Sales**

A "short sale" is a transaction where the seller's proceeds from the sale are insufficient to cover seller's obligations at closing (e.g., the seller's outstanding mortgage is greater than the sale price). If a sale is a short sale, the seller's real estate firm must disclose to the seller that the decision by any beneficiary or mortgagee, to release its interest in the property for less than the amount the seller owes to allow the sale to proceed, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including real estate firms' compensation.

NEW SECTION. **Sec.**  This act takes effect January 1, 2024.

**--- END ---**