

SSB 5191 - H COMM AMD

By Committee on Consumer Protection & Business

ADOPTED 04/11/2023

1 Strike everything after the enacting clause and insert the
2 following:

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

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Agency relationship" means the agency relationship created
8 under this chapter (~~(or by written agreement)~~) between a real estate
9 firm and a (~~(buyer and/or seller relating to the performance of real~~
10 ~~estate brokerage services)~~) principal.

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

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

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

22 (5) "Business opportunity" means and includes a business,
23 business opportunity, and goodwill of an existing business, or any
24 one or combination thereof when the transaction or business includes
25 an interest in real property.

26 (~~(+5)~~) (6) "Buyer" means an actual or prospective purchaser in a
27 real estate transaction, or an actual or prospective tenant in a real
28 estate rental or lease transaction, as applicable.

29 (~~(+6)~~) (7) "Buyer's agent" means a broker who has (~~(entered~~
30 ~~into)~~) an agency relationship with only the buyer in a real estate
31 transaction(~~(, and includes subagents engaged by a buyer's agent)~~).

1 ~~((7))~~ (8) "Commercial real estate" has the same meaning as in
2 RCW 60.42.005.

3 (9) "Confidential information" means information from or
4 concerning a principal ~~((of a broker))~~ that:

5 (a) Was acquired by the broker during the course of an agency
6 relationship with the principal;

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

8 (c) The principal has not disclosed or authorized to be disclosed
9 to third parties;

10 (d) Would, if disclosed, operate to the detriment of the
11 principal; and

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

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

17 ~~((9))~~ (11) "Material fact" means information that substantially
18 adversely affects the value of the property or a party's ability to
19 perform its obligations in a real estate transaction, or operates to
20 materially impair or defeat the purpose of the transaction. The fact
21 or suspicion that the property, or any neighboring property, is or
22 was the site of a murder, suicide or other death, rape or other sex
23 crime, assault or other violent crime, robbery or burglary, illegal
24 drug activity, gang-related activity, political or religious
25 activity, or other act, occurrence, or use not adversely affecting
26 the physical condition of or title to the property is not a material
27 fact.

28 ~~((10))~~ (12) "Principal" means a buyer or a seller who has
29 ~~((entered into))~~ an agency relationship with a broker.

30 ~~((11))~~ (13) "Real estate brokerage services" means the
31 rendering of services for which a real estate license is required
32 under chapter 18.85 RCW.

33 ~~((12))~~ (14) "Real estate firm" or "firm" have the same meaning
34 as defined in chapter 18.85 RCW.

35 ~~((13))~~ (15) "Real estate transaction" or "transaction" means an
36 actual or prospective transaction involving a purchase, sale, option,
37 or exchange of any interest in real property or a business
38 opportunity, or a lease or rental of real property. For purposes of
39 this chapter, a prospective transaction does not exist until a

1 written offer has been signed by at least one (~~of the parties~~)
2 party.

3 (~~(14)~~) (16) "Seller" means an actual or prospective seller in a
4 real estate transaction, or an actual or prospective landlord in a
5 real estate rental or lease transaction, as applicable.

6 (~~(15)~~) (17) "Seller's agent" means a broker who has (~~entered~~
7 ~~into~~) an agency relationship with only the seller in a real estate
8 transaction (~~, and includes subagents engaged by a seller's agent.~~

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

12 **Sec. 2.** RCW 18.86.020 and 2013 c 58 s 2 are each amended to read
13 as follows:

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

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

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

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

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

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

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

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

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

11 (b) The services agreement must include the following:

12 (i) The term of the agreement, and if the principal is a buyer, a
13 default term of 60 days with the option of a longer term;

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

15 (iii) Whether the agency relationship is exclusive or
16 nonexclusive, and if the principal is a buyer, checkbox options for
17 the buyer to select either an exclusive or nonexclusive relationship;

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

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

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

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

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

3 (1) ~~((Regardless of whether a broker is an agent, the))~~ A broker
4 owes ~~((to all parties to whom the broker renders real estate~~
5 ~~brokerage services))~~ the following duties to their principal and to
6 all parties in a transaction, which may not be waived:

7 (a) To exercise reasonable skill and care;

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

9 (c) To present all written offers, written notices and other
10 written communications to and from either party in a timely manner,
11 regardless of whether the property is subject to an existing contract
12 for sale or the buyer is already a party to an existing contract to
13 purchase;

14 (d) To disclose all existing material facts known by the broker
15 and not apparent or readily ascertainable to a party; provided that
16 this subsection shall not be construed to imply any duty to
17 investigate matters that the broker has not agreed to investigate;

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

20 (f) To provide a pamphlet ~~((on the law of real estate agency))~~ in
21 the form prescribed ~~((in))~~ by RCW 18.86.120 and obtain an
22 acknowledgment of receipt by the party. The pamphlet shall be
23 provided to ~~((all parties))~~:

24 (i) Any party to whom the broker renders real estate brokerage
25 services ~~((, before the party signs an agency agreement with the~~
26 ~~broker, signs an offer in a real estate transaction handled by the~~
27 ~~broker, consents to dual agency, or waives any rights, under RCW~~
28 ~~18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)~~
29 ~~(e) or (f), whichever occurs earliest; and~~

30 ~~(g) To disclose in writing to all parties to whom the broker~~
31 ~~renders real estate brokerage services, before the party signs an~~
32 ~~offer in a real estate transaction handled by the broker, whether))~~
33 as soon as reasonably practical but before the party signs a services
34 agreement; and

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

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

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

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

9 (2) Unless otherwise agreed, a broker owes no duty to conduct an
10 independent inspection of the property or to conduct an independent
11 investigation of either party's financial condition, and owes no duty
12 to independently verify the accuracy or completeness of any statement
13 made by either party or by any source reasonably believed by the
14 broker to be reliable.

15 **Sec. 4.** RCW 18.86.040 and 2013 c 58 s 5 are each amended to read
16 as follows:

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

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

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

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

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

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

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

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

5 **Sec. 5.** RCW 18.86.050 and 2013 c 58 s 6 are each amended to read
6 as follows:

7 (1) Unless additional duties are agreed to in writing signed by a
8 buyer's agent, the duties of a buyer'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 buyer by taking no action that is adverse
12 or detrimental to the buyer's interest in a transaction;

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

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

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

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

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

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

34 **Sec. 6.** RCW 18.86.060 and 2013 c 58 s 7 are each amended to read
35 as follows:

36 (1) ~~((Notwithstanding any other provision of this chapter, a))~~ A
37 broker may act as a limited dual agent only with the written consent
38 of both parties to the transaction ~~((after the dual agent has~~

1 ~~complied with RCW 18.86.030(1)(f), which consent must include a~~
2 ~~statement of the terms of compensation)), set forth in the services~~
3 ~~agreement.~~

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

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

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

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

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

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

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

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

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

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

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

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

18 **Sec. 7.** RCW 18.86.070 and 2013 c 58 s 8 are each amended to read
19 as follows:

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

- 24 (a) Completion of performance by the broker;
25 (b) Expiration of the term agreed upon by the parties;
26 (c) Termination of the relationship by mutual agreement of the
27 parties; or
28 (d) Termination of the relationship by notice from either party
29 to the other. However, such a termination does not otherwise affect
30 the contractual rights of either party.

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

- 34 (a) (~~Accounting~~) To account for all moneys and property
35 received during the relationship; and
36 (b) (~~Not disclosing~~) To not disclose confidential information.

37 **Sec. 8.** RCW 18.86.080 and 2013 c 58 s 9 are each amended to read
38 as follows:

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

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

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

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

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

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

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

24 (a) The terms of compensation, including:

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

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

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

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

33 (c) Any other agreements between the parties.

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

1 in the agreement between the buyer and seller or in a separate
2 writing titled "Compensation Disclosure."

3 (9) A firm may receive compensation without a services agreement
4 for the provision of a broker's price opinion, as defined in RCW
5 18.85.011, or a referral by one firm to another firm if the referring
6 firm provided no real estate brokerage services in the transaction.

7 **Sec. 9.** RCW 18.86.090 and 2013 c 58 s 10 are each amended to
8 read as follows:

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

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

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

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

23 **Sec. 10.** RCW 18.86.100 and 2013 c 58 s 11 are each amended to
24 read as follows:

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

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

35 **Sec. 11.** RCW 18.86.120 and 2013 c 58 s 13 are each amended to
36 read as follows:

1 ~~((1))~~ The pamphlet required under RCW 18.86.030(1)(f) shall
2 ~~((consist of the entire text of RCW 18.86.010 through 18.86.030 and~~
3 ~~18.86.040 through 18.86.110 with a separate cover page. The pamphlet~~
4 ~~shall be 8 1/2 by 11 inches in size, the text shall be in print no~~
5 ~~smaller than 10-point type, the cover page shall be in print no~~
6 ~~smaller than 12-point type, and the title of the cover page "The Law~~
7 ~~of Real Estate Agency" shall be in print no smaller than 18-point~~
8 ~~type. The cover page shall be in the following form:~~

9 **The Law of Real Estate Agency**

10 This pamphlet describes your legal rights in dealing
11 with a real estate firm or broker. Please read it carefully
12 before signing any documents.

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

14 Sec. 1. Definitions. Defines the specific terms used in the
15 law.

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

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

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

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

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

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

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

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

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

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

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

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

36 ~~(b) For the purposes of this subsection, "owner-occupied real~~
37 ~~property" means real property consisting solely of a single-family~~
38 ~~residence, a residential condominium unit, or a residential~~
39 ~~cooperative unit that is the principal residence of the borrower)) be~~

1 formatted so it can be easily reviewed by a buyer or seller,
2 including a legible font and font size. The pamphlet shall be in the
3 following form:

4 **Real Estate Brokerage in Washington**

5 **Introduction**

6 This pamphlet provides general information about real estate
7 brokerage and summarizes the laws related to real estate brokerage
8 relationships. It describes a real estate broker's duties to the
9 seller/landlord and buyer/tenant. Detailed and complete information
10 about real estate brokerage relationships is available in chapter
11 18.86 RCW.

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

14 **Licensing and Supervision of Brokers**

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

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

25 **Agency Relationship**

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

30 **For Sellers**

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

1 For Buyers

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

10 For both Buyer and Seller - as a Limited Dual Agent

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

23 Duration of Agency Relationship

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

- 26 (1) Completion of performance by the broker;
27 (2) Expiration of the term agreed upon by the parties;
28 (3) Termination of the relationship by mutual agreement of the
29 parties; or
30 (4) Termination of the relationship by notice from either party
31 to the other. However, such a termination does not affect the
32 contractual rights of either party.

33 **Written Services Agreement**

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

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

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

3 (3) Whether the agency relationship is exclusive (which does not
4 allow the principal to enter into an agency relationship with another
5 firm during the term) or nonexclusive (which allows the principal to
6 enter into an agency relationship with multiple firms at the same
7 time);

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

9 (5) The terms of compensation;

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

13 (7) Any other agreements between the parties.

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

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

16 (1) To exercise reasonable skill and care;

17 (2) To deal honestly and in good faith;

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **Limited Dual Agent Duties**

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

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

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

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

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

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

32 **Compensation**

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

1 A services agreement must contain the following regarding
2 compensation:

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

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

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

9 **Short Sales**

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

19 NEW SECTION. Sec. 12. This act takes effect January 1, 2024."

20 Correct the title.

EFFECT: (1) Establishes that the default term for a services agreement between a broker and a buyer is 60 days, but allows a buyer to enter into a longer term.

(2) Requires the services agreement between a broker and a buyer to include checkbox options for the buyer to select whether the broker relationship is exclusive or nonexclusive.

(3) Requires the broker to obtain the other party's acknowledgment that they received the Washington Real Estate Agency pamphlet.

(4) Adds to the Washington Real Estate Agency pamphlet a description of what exclusive and nonexclusive agency relationships are.

--- END ---