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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)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to reforming the real estate agency law to  
2 require written brokerage services agreements, improve consumer  
3 disclosures, and provide that certain legal duties of brokers apply  
4 to all parties in the transaction; amending RCW 18.86.010, 18.86.020,  
5 18.86.030, 18.86.040, 18.86.050, 18.86.060, 18.86.070, 18.86.080,  
6 18.86.090, 18.86.100, and 18.86.120; and providing an effective date.

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

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

10 Unless the context clearly requires otherwise, the definitions in  
11 this section apply throughout this chapter.

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

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

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

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

8 (5) "Business opportunity" means and includes a business,  
9 business opportunity, and goodwill of an existing business, or any  
10 one or combination thereof when the transaction or business includes  
11 an interest in real property.

12 ~~((+5))~~ (6) "Buyer" means an actual or prospective purchaser in a  
13 real estate transaction, or an actual or prospective tenant in a real  
14 estate rental or lease transaction, as applicable.

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

18 ~~((+7))~~ (8) "Commercial real estate" has the same meaning as in  
19 RCW 60.42.005.

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

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

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

25 (c) The principal has not disclosed or authorized to be disclosed  
26 to third parties;

27 (d) Would, if disclosed, operate to the detriment of the  
28 principal; and

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

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

34 ~~((+9))~~ (11) "Material fact" means information that substantially  
35 adversely affects the value of the property or a party's ability to  
36 perform its obligations in a real estate transaction, or operates to  
37 materially impair or defeat the purpose of the transaction. The fact  
38 or suspicion that the property, or any neighboring property, is or  
39 was the site of a murder, suicide or other death, rape or other sex  
40 crime, assault or other violent crime, robbery or burglary, illegal

1 drug activity, gang-related activity, political or religious  
2 activity, or other act, occurrence, or use not adversely affecting  
3 the physical condition of or title to the property is not a material  
4 fact.

5 ~~((10))~~ (12) "Principal" means a buyer or a seller who has  
6 ~~((entered into))~~ an agency relationship with a broker.

7 ~~((11))~~ (13) "Real estate brokerage services" means the  
8 rendering of services for which a real estate license is required  
9 under chapter 18.85 RCW.

10 ~~((12))~~ (14) "Real estate firm" or "firm" have the same meaning  
11 as defined in chapter 18.85 RCW.

12 ~~((13))~~ (15) "Real estate transaction" or "transaction" means an  
13 actual or prospective transaction involving a purchase, sale, option,  
14 or exchange of any interest in real property or a business  
15 opportunity, or a lease or rental of real property. For purposes of  
16 this chapter, a prospective transaction does not exist until a  
17 written offer has been signed by at least one ~~((of the parties))~~  
18 party.

19 ~~((14))~~ (16) "Seller" means an actual or prospective seller in a  
20 real estate transaction, or an actual or prospective landlord in a  
21 real estate rental or lease transaction, as applicable.

22 ~~((15))~~ (17) "Seller's agent" means a broker who has ~~((entered~~  
23 ~~into))~~ an agency relationship with only the seller in a real estate  
24 transaction~~((, and includes subagents engaged by a seller's agent.~~

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

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

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

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

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

38 ~~(e))~~ Broker's firm has appointed the broker to represent the  
39 seller pursuant to a ~~((written agency))~~ services agreement between

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

5 ~~((d))~~ (c) Broker is the seller or one of the sellers ~~(; or~~  
6 ~~(e) Parties agree otherwise in writing after the broker has~~  
7 ~~complied with RCW 18.86.030(1)(f).~~

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

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

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

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

27 (i) The term of the agreement;

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

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

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

38 (v) Whether the principal consents to the firm's designated  
39 broker and any managing broker responsible for the supervision of the  
40 broker appointed as an agent for the principal to act as a limited

1 dual agent in a transaction in which different brokers affiliated  
2 with the same firm represent different parties.

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

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

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

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

18 (a) To exercise reasonable skill and care;

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

20 (c) To present all written offers, written notices and other  
21 written communications to and from either party in a timely manner,  
22 regardless of whether the property is subject to an existing contract  
23 for sale or the buyer is already a party to an existing contract to  
24 purchase;

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

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

31 (f) To provide a pamphlet ~~((on the law of real estate agency))~~ in  
32 the form prescribed ~~((in))~~ by RCW 18.86.120 to ~~((all parties))~~ :

33 (i) Any party to whom the broker renders real estate brokerage  
34 services ~~((, before the party signs an agency agreement with the~~  
35 ~~broker, signs an offer in a real estate transaction handled by the~~  
36 ~~broker, consents to dual agency, or waives any rights, under RCW~~  
37 ~~18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)~~  
38 ~~(e) or (f), whichever occurs earliest; and~~

1 ~~(g) To disclose in writing to all parties to whom the broker~~  
2 ~~renders real estate brokerage services, before the party signs an~~  
3 ~~offer in a real estate transaction handled by the broker, whether))~~  
4 as soon as reasonably practical but before the party signs a services  
5 agreement; and

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

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

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

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

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

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

28 (1) Unless additional duties are agreed to in writing signed by a  
29 seller's agent, the duties of a seller's agent are limited to those  
30 set 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 seller by taking no action that is adverse  
33 or detrimental to the seller's interest in a transaction;

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

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

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

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

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

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

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

17 (1) Unless additional duties are agreed to in writing signed by a  
18 buyer's agent, the duties of a buyer's agent are limited to those set  
19 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 buyer by taking no action that is adverse  
22 or detrimental to the buyer's interest in a transaction;

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

24 (c) To advise the buyer to seek expert advice on matters relating  
25 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 buyer, 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 buyer's agent  
30 has complied with RCW 18.86.030(1)(f), to make a good faith and  
31 continuous effort to find a property for the buyer; except that a  
32 buyer's agent is not obligated to(~~:(i) Seek~~) seek additional  
33 properties to purchase while the buyer is a party to an existing  
34 contract to purchase(~~:(ii) show properties as to which there is~~  
35 ~~no written agreement to pay compensation to the buyer's agent~~)).

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



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

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

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

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

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

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

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

- 34 (a) Completion of performance by the broker;  
35 (b) Expiration of the term agreed upon by the parties;  
36 (c) Termination of the relationship by mutual agreement of the  
37 parties; or

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

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

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

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

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

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

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

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

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

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

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

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

35 (a) The terms of compensation, including:

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

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

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

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

6 (c) Any other agreements between the parties.

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

16 (9) A firm may receive compensation without a services agreement  
17 for the provision of a broker's price opinion, as defined in RCW  
18 18.85.011, or a referral by one firm to another firm if the referring  
19 firm provided no real estate brokerage services in the transaction.

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

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

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

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

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

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



1 solely represents his or her client unless the parties agree  
2 in writing that both brokers are dual agents.

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

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

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

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

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

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

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

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

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

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

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

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

## 19                   **Real Estate Brokerage in Washington**

### 20       **Introduction**

21       This pamphlet provides general information about real estate  
22 brokerage and summarizes the laws related to real estate brokerage  
23 relationships. It describes a real estate broker's duties to the  
24 seller/landlord and buyer/tenant. Detailed and complete information  
25 about real estate brokerage relationships is available in chapter  
26 18.86 RCW.

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

### 29       **Licensing and Supervision of Brokers**

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

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

#### 4 **Agency Relationship**

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

#### 9 For Sellers

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

#### 15 For Buyers

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

#### 24 For both Buyer and Seller - as a Limited Dual Agent

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

1 Duration of Agency Relationship

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

4 (1) Completion of performance by the broker;

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

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

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

11 **Written Services Agreement**

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

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

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

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

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

19 (5) The terms of compensation;

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

23 (7) Any other agreements between the parties.

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

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

26 (1) To exercise reasonable skill and care;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 24 **Limited Dual Agent Duties**

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

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

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

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

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

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

5       **Compensation**

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

12       A services agreement must contain the following regarding  
13 compensation:

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

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

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

20       **Short Sales**

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

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

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