

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5191

Chapter 318, Laws of 2023

68th Legislature
2023 Regular Session

REAL ESTATE BROKERS—VARIOUS PROVISIONS

EFFECTIVE DATE: January 1, 2024

Passed by the Senate April 14, 2023
Yeas 46 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 11, 2023
Yeas 97 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 4, 2023 3:57 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5191** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 5, 2023

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5191

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

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 ~~(b) ((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 ~~(c))~~ 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, and if the principal is a buyer, a
28 default term of 60 days with the option of a longer term;

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

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

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

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

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

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

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

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

21 (a) To exercise reasonable skill and care;

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

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

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

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

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

38 (i) Any party to whom the broker renders real estate brokerage
39 services ~~((, before the party signs an agency agreement with the~~

1 ~~broker, signs an offer in a real estate transaction handled by the~~
2 ~~broker, consents to dual agency, or waives any rights, under RCW~~
3 ~~18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)~~
4 ~~(e) or (f), whichever occurs earliest; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (e) Unless otherwise agreed to in writing after the buyer's agent
35 has complied with RCW 18.86.030(1)(f), to make a good faith and
36 continuous effort to find a property for the buyer; except that a
37 buyer's agent is not obligated to(~~(i) Seek~~) seek additional
38 properties to purchase while the buyer is a party to an existing

1 contract to purchase (~~or (ii) show properties as to which there is~~
2 ~~no written agreement to pay compensation to the buyer's agent~~)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (1) The agency relationships (~~set forth in this chapter commence~~
38 ~~at the time that the broker undertakes to provide real estate~~

1 ~~brokerage services to a principal and~~) established pursuant to this
2 chapter continue until the earliest of the following:

- 3 (a) Completion of performance by the broker;
4 (b) Expiration of the term agreed upon by the parties;
5 (c) Termination of the relationship by mutual agreement of the
6 parties; or
7 (d) Termination of the relationship by notice from either party
8 to the other. However, such a termination does not otherwise affect
9 the contractual rights of either party.

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

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

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

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

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

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

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

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

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

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

1 real estate firm must have a services agreement containing the
2 following:

3 (a) The terms of compensation, including:

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

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

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

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

12 (c) Any other agreements between the parties.

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

22 (9) A firm may receive compensation without a services agreement
23 for the provision of a broker's price opinion, as defined in RCW
24 18.85.011, or a referral by one firm to another firm if the referring
25 firm provided no real estate brokerage services in the transaction.

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

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

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

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

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

1 ~~the liability of a firm for an act, error, or omission by a broker~~
2 ~~licensed to the firm.))~~

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

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

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

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

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

25 **~~The Law of Real Estate Agency~~**

26 ~~This pamphlet describes your legal rights in dealing~~
27 ~~with a real estate firm or broker. Please read it carefully~~
28 ~~before signing any documents.~~

29 ~~The following is only a brief summary of the attached law:~~
30 ~~Sec. 1. Definitions. Defines the specific terms used in the~~
31 ~~law.~~
32 ~~Sec. 2. Relationships between Brokers and the Public.~~
33 ~~Prescribes that a broker who works with a buyer or tenant~~
34 ~~represents that buyer or tenant unless the broker is the~~
35 ~~listing agent, a seller's subagent, a dual agent, the seller~~
36 ~~personally or the parties agree otherwise. Also prescribes~~

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Real Estate Brokerage in Washington

23 Introduction

24 This pamphlet provides general information about real estate
25 brokerage and summarizes the laws related to real estate brokerage
26 relationships. It describes a real estate broker's duties to the
27 seller/landlord and buyer/tenant. Detailed and complete information
28 about real estate brokerage relationships is available in chapter
29 18.86 RCW.

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

32 Licensing and Supervision of Brokers

33 To provide real estate brokerage services in Washington, a broker
34 must be licensed under chapter 18.85 RCW and licensed with a real
35 estate firm, which also must be licensed. Each real estate firm has a
36 designated broker who is responsible for supervising the brokers
37 licensed with the firm. Some firms may have branch offices that are

1 supervised by a branch manager and some firms may delegate certain
2 supervisory duties to one or more managing brokers.

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

6 **Agency Relationship**

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

11 For Sellers

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

17 For Buyers

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

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

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

1 managing broker responsible for the supervision of those brokers are
2 limited dual agents.

3 Duration of Agency Relationship

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

6 (1) Completion of performance by the broker;

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

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

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

13 **Written Services Agreement**

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

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

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

19 (3) Whether the agency relationship is exclusive (which does not
20 allow the principal to enter into an agency relationship with another
21 firm during the term) or nonexclusive (which allows the principal to
22 enter into an agency relationship with multiple firms at the same
23 time);

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

25 (5) The terms of compensation;

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

29 (7) Any other agreements between the parties.

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

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

32 (1) To exercise reasonable skill and care;

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

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

36 (4) To disclose all existing material facts known by the broker
37 and not apparent or readily ascertainable to a party. A material fact
38 includes information that substantially adversely affects the value

1 of the property or a party's ability to perform its obligations in a
2 transaction, or operates to materially impair or defeat the purpose
3 of the transaction. However, a broker does not have any duty to
4 investigate matters that the broker has not agreed to investigate;

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

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

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

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

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

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

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

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

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

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

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

30 **Limited Dual Agent Duties**

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

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

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

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

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

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

10 **Compensation**

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

17 A services agreement must contain the following regarding
18 compensation:

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

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

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

25 **Short Sales**

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

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

Passed by the Senate April 14, 2023.

Passed by the House April 11, 2023.

Approved by the Governor May 4, 2023.
Filed in Office of Secretary of State May 5, 2023.

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