

THE L·A·W OF REAL ESTATE AGENCY

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

THE FOLLOWING IS ONLY A BRIEF SUMMARY OF THE ATTACHED LAW:

SECTION 1. DEFINITIONS. Defines the specific terms used in the law.

SECTION 2. RELATIONSHIPS BETWEEN LICENSEES AND THE PUBLIC. States that a licensee who works with a buyer or tenant represents that buyer or tenant — unless the licensee is the listing agent, a seller's sub-agent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client — unless the parties agree in writing that both licensees are dual agents.

SECTION 3. DUTIES OF A LICENSEE GENERALLY. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

SECTION 4. DUTIES OF A SELLER'S AGENT. Prescribes the additional duties of a licensee representing the seller or landlord only.

SECTION 5. DUTIES OF A BUYER'S AGENT. Prescribes the additional duties of a licensee representing the buyer or tenant only.

SECTION 6. DUTIES OF A DUAL AGENT. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

SECTION 7. DURATION OF AGENCY RELATIONSHIP. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

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

SECTION 9. VICARIOUS LIABILITY. Eliminates the common law liability of a party for the conduct of the party's agent or sub-agent, unless the agent or sub-agent is insolvent. Also limits the liability of a broker for the conduct of a sub-agent associated with a different broker.

SECTION 10. IMPUTED KNOWLEDGE AND NOTICE. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

SECTION 11. INTERPRETATION. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

SECTION ONE

18.86.010. DEFINITIONS.

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

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

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

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

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

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes sub-agents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:

- a) Was acquired by the licensee during the course of an agency relationship with the principal;
- b) The principal reasonably expects to be kept confidential;
- c) The principal has not disclosed or authorized to be disclosed to third parties;
- d) Would, if disclosed, operate to the detriment of the principal; and
- e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in Chapter 8.85 RCW.

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

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

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

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

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

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes sub-agents engaged by a seller's agent.

(15) "Sub-agent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint sub-agents. ■

SECTION TWO

18.86.020. AGENCY RELATIONSHIP.

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

- (a) Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller's agent;
- (b) Licensee has entered into a sub-agency agreement with the seller's agent, in which case the licensee is a seller's agent;
- (c) Licensee has entered into a written agency agreement with both parties, in which case the licensee is a dual agent;
- (d) Licensee is the seller or one of the sellers; or
- (e) Parties agree otherwise in writing after the licensee has complied with RCW 18.86.030(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

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

SECTION THREE

18.86.030. DUTIES OF A LICENSEE.

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

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- (e) To account in a timely manner for all money and property received from or on behalf of either party;
- (f) To provide a pamphlet on the law of real estate agency in the

form-prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f) whichever occurs earliest; and

- (g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate written document entitled "Agency Disclosure."

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

SECTION FOUR

18.86.040. SELLER'S AGENT — DUTIES.

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

- 1) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
- 2) To timely disclose to the seller any conflicts of interest;
- 3) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- 4) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
- 5) Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.
- 6)
- 7) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.
- 8) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest. ■

SECTION FIVE

18.86.050. BUYER'S AGENT — DUTIES.

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

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;
- (c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f) of this act, to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)

- (a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.
- (b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyers or create a conflict of interest. ■

SECTION SIX

18.86.060. DUAL AGENT — DUTIES.

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

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

- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
- (b) To timely disclose to both parties any conflicts of interest;
- (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
- (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
- (e) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

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

(3)

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

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

(4)

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

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

SECTION SEVEN

18.86.070. DURATION OF AGENCY RELATIONSHIP.

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

- (a) Completion of performance by the licensee;
- (b) Expiration of the term agreed upon by the parties; or
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

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

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information. ■

SECTION EIGHT

18.86.080. COMPENSATION.

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

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

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

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

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

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

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a licensee to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer. ■

SECTION NINE

18.86.090. VICARIOUS LIABILITY.

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

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

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

SECTION TEN

18.86.100. IMPUTED KNOWLEDGE AND NOTICE.

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

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a sub-agent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker. ■

SECTION ELEVEN

18.86.110. APPLICATION.

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly. ■