
HOUSE BILL 1659

State of Washington 54th Legislature 1995 Regular Session

By Representatives Mielke, Quall, Crouse, Costa, Kremen and Cooke

Read first time 02/03/95. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to real estate brokerage relationships; adding a
2 new chapter to Title 18 RCW; and providing an effective date.

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

4 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context clearly
5 requires otherwise, the definitions in this section apply throughout
6 this chapter.

7 (1) "Agent" means a licensee who enters into a brokerage
8 relationship under this chapter.

9 (2) "Affiliated licensee" means a licensed associate broker or a
10 salesperson as defined in chapter 18.85 RCW.

11 (3) "Broker" means the same as defined in chapter 18.85 RCW.

12 (4) "Brokerage relationship" means a limited agency relationship
13 created under this chapter between a licensee and a principal either by
14 mutual agreement or as provided in section 2 of this act relating to
15 the performance of services of a licensee.

16 (5) "Business opportunity" means and includes a business, business
17 opportunity and good will of an existing business, or any one or
18 combination thereof.

1 (6) "Buyer's/tenant's agent" means a licensee who has entered into
2 a brokerage relationship with only the buyer/tenant in a real estate
3 transaction, and includes subagents engaged by a buyer's/tenant's
4 agent.

5 (7) "Dual agent" means a licensee who, with the written consent of
6 all parties to a contemplated real estate transaction, has entered into
7 a brokerage relationship with both the seller/landlord and
8 buyer/tenant.

9 (8) "Leasing" means and includes renting and a "lease" means and
10 includes a rental agreement.

11 (9) "Licensee" means a broker, as defined in chapter 18.85 RCW, or
12 an affiliated broker or salesperson, as defined in chapter 18.85 RCW,
13 acting as subagent of the broker.

14 (10) "Limited agency relationship" means an agency relationship
15 between a licensee and a principal as limited by this chapter.

16 (11) "Principal" means the seller/landlord or the buyer/tenant who
17 enters into a brokerage relationship with a broker under to this
18 chapter.

19 (12) "Seller's/landlord's agent" means a licensee who has entered
20 into a brokerage relationship with only the seller/landlord in a real
21 estate transaction, and includes subagents engaged by a
22 seller's/landlord's agent.

23 (13) "Purchase and sale agreement" means any preclosing agreement
24 regarding the sale or other conveyance of an interest in real estate or
25 a business opportunity.

26 (14) "Real estate transaction" and "transaction" and other similar
27 terms shall include real estate sales, real estate leasing, and sales
28 of business opportunities.

29 (15) "Real estate" and "property" and other similar terms include
30 real estate, leases, and business opportunities.

31 (16) "Seller/landlord" and "buyer/tenant" means, when applying to
32 a transaction, as appropriate based upon whether the transaction is a
33 sale or a lease transaction.

34 (17) "Subagent" means a licensee who is authorized to act on behalf
35 of a principal by the principal's agent.

36 NEW SECTION. **Sec. 2.** RELATIONSHIPS BETWEEN LICENSEES AND THE
37 PUBLIC. (1) Unless otherwise agreed in writing and signed by all
38 parties, a licensee who enters into a brokerage relationship with a

1 principal shall be limited to representing only that principal in the
2 transaction.

3 (2) A licensee shall be a buyer's/tenant's agent unless the:

4 (a) Licensee enters into a written agency agreement with the
5 seller/landlord;

6 (b) Licensee enters into a subagency agreement with the
7 seller's/landlord's agent;

8 (c) Licensee enters into a written dual agency agreement with the
9 parties; or

10 (d) Parties agree otherwise in writing.

11 (3) A licensee may work with a party in separate transactions
12 pursuant to different relationships including but not limited to,
13 selling or leasing property as a seller's/landlord's agent and working
14 with that seller/landlord in buying or leasing another property as a
15 seller's/landlord's agent, or as a subagent, if the licensee complies
16 with this chapter.

17 (4) A broker is not required to offer or engage in more than one of
18 the brokerage relationships under this chapter.

19 (5) A licensee shall provide to the licensee's principal a written
20 disclosure of the statutory duties of a licensee as set forth in
21 sections 3 through 5 of this act. This disclosure shall be provided on
22 or before the earlier of the date that a written agreement establishing
23 a brokerage relationship is entered into between the licensee and the
24 principal, or the date that the licensee obtains the principal's
25 signature on a purchase and sale agreement.

26 NEW SECTION. **Sec. 3.** DUTIES OF A SELLER'S/LANDLORD'S AGENT. (1)
27 Unless otherwise agreed in writing signed by a seller/landlord and a
28 seller's/landlord's agent after the disclosures required by section
29 2(5) of this act have been made, the duties and obligations of a
30 seller's/landlord's agent or subagent are limited to the following:

31 (a) Exercise reasonable skill and care for the seller/landlord;

32 (b) Deal with the seller/landlord at all times in good faith;

33 (c) After a purchase and sale agreement or lease is entered into by
34 the seller/landlord, be loyal to the seller/landlord by taking no
35 action that is adverse or detrimental to the seller's/landlord's
36 interest in the transaction;

37 (d) Abide by the terms of the brokerage agreement;

- 1 (e) Advise the seller/landlord to obtain expert advice on material
2 matters that are outside the scope of the brokerage relationship;
- 3 (f) Disclose to the seller/landlord in a timely manner all material
4 facts that the agent has agreed in writing to investigate, and items
5 described in section 9(3) of this act;
- 6 (g) Seek a buyer/tenant to purchase or lease the
7 seller's/landlord's property at a price, terms, and conditions
8 acceptable to the seller/landlord; except that the seller's/landlord's
9 agent is not obligated to seek additional offers to purchase or lease
10 the property while the property is subject to an existing purchase and
11 sale agreement or lease;
- 12 (h) Present all written offers to and from the seller/landlord in
13 a timely manner regardless of whether the property is subject to an
14 existing purchase and sale agreement or lease;
- 15 (i) Disclose to the seller/landlord all existing material facts
16 actually known by the seller's/landlord's agent and not reasonably
17 ascertainable to the seller/landlord that substantially adversely
18 affect the ability of the buyer/tenant to perform under the terms of
19 any seller/landlord financing or the terms of the lease;
- 20 (j) Not disclose any confidential information from or about the
21 seller/landlord, except with the seller's/landlord's consent, even
22 after termination of the brokerage relationship. "Confidential
23 information" means information from or concerning a seller/landlord
24 that:
- 25 (i) Was acquired by the seller's/landlord's agent during the course
26 of a brokerage relationship with the seller/landlord;
- 27 (ii) The seller/landlord reasonably expects to be kept
28 confidential;
- 29 (iii) Is not a matter of public record;
- 30 (iv) The seller/landlord has not disclosed or authorized to be
31 disclosed to third parties;
- 32 (v) If disclosed, would operate to the detriment of the
33 seller/landlord; and
- 34 (vi) The seller/landlord personally would not be obligated to
35 disclose to the buyer/tenant or third parties;
- 36 (k) Account to the seller/landlord in a timely manner for all money
37 and property received from, or on behalf of, the seller/landlord; and
- 38 (l) Comply with all requirements of this chapter.

1 (2)(a) A seller's/landlord's agent owes no duty or obligation to a
2 buyer/tenant; except that a seller's/landlord's agent shall disclose to
3 the buyer/tenant all existing material facts actually known by the
4 seller's/landlord's agent and not reasonably ascertainable to the
5 buyer/tenant, that substantially adversely affects the value of the
6 property or operates to materially impair or defeat the purpose of the
7 transaction.

8 (b) A seller's/landlord's agent owes no duty to conduct an
9 independent inspection of the property for the benefit of the
10 seller/landlord or buyer/tenant and owes no duty to independently
11 verify the accuracy or completeness of any statement made by the
12 seller/landlord or other information obtained from any source
13 reasonably believed by the seller's/landlord's agent to be reliable.

14 (3) A seller's/landlord's agent's showing of alternative properties
15 not owned by the seller/landlord to prospective buyers/tenants, and the
16 listing of competing properties for sale or lease by the
17 seller's/landlord's agent, is not a breach by the seller's/landlord's
18 agent of any duty or obligation to the seller/landlord.

19 NEW SECTION. **Sec. 4.** DUTIES OF A BUYER'S/TENANT'S AGENT. (1)
20 Unless otherwise agreed in writing signed by a buyer/tenant and a
21 buyer's/tenant's agent after the disclosures required by section 2(5)
22 of this act have been made, the duties and obligations of a
23 buyer's/tenant's agent or subagent are limited to the following:

- 24 (a) Exercise reasonable skill and care for the buyer/tenant;
- 25 (b) Deal with the buyer/tenant at all times in good faith;
- 26 (c) After a purchase and sale agreement or lease is entered into by
27 the buyer/tenant, be loyal to the buyer/tenant by taking no action that
28 is adverse or detrimental to the buyer's/tenant's interest in the
29 transaction;
- 30 (d) Abide by the terms of the brokerage agreement, if any;
- 31 (e) Advise the buyer/tenant to obtain expert advice on material
32 matters that are outside the scope of the brokerage relationship;
- 33 (f) Seek for a buyer a property for purchase, and for a tenant, a
34 property to lease, at a price, terms, and conditions that are
35 acceptable to the buyer/tenant; except that the buyer's/tenant's agent
36 shall not be obligated to seek other properties while the buyer/tenant
37 is a party to an existing purchase and sale agreement or lease;

1 (g) Present all written offers to and from the buyer/tenant in a
2 timely manner regardless of whether the buyer/tenant is already a party
3 to an existing purchase and sale agreement or lease;

4 (h) Disclose to the buyer/tenant in a timely manner all existing
5 material facts actually known by the buyer's/tenant's agent and which
6 are not reasonably ascertainable to the buyer/tenant, including without
7 limitation material facts regarding the condition of the property and
8 items described in section 9(3) of this act;

9 (i) Not disclose any confidential information from or about the
10 buyer/tenant, except with the buyer's/tenant's consent, even after
11 termination of the brokerage relationship. "Confidential information"
12 means information from or concerning the buyer/tenant that:

13 (i) Was acquired by the buyer's/tenant's agent during the course of
14 a brokerage relationship with the buyer/tenant;

15 (ii) The buyer/tenant reasonably expects to be kept confidential;

16 (iii) Is not a matter of public record;

17 (iv) The buyer/tenant has not disclosed or authorized to be
18 disclosed to third parties;

19 (v) If disclosed, would operate to the detriment of the
20 buyer/tenant; and

21 (vi) The buyer/tenant personally would not be obligated to disclose
22 to the seller/landlord or third parties;

23 (j) Account to the buyer/tenant in a timely manner for all money
24 and property received from, or on behalf of, the buyer/tenant; and

25 (k) Comply with all requirements of this chapter.

26 (2)(a) A buyer's/tenant's agent owes no duty or obligation to a
27 seller/landlord, except that a buyer's/tenant's agent shall disclose to
28 the seller/landlord all existing material facts actually known by the
29 buyer's/tenant's agent and not reasonably ascertainable to the
30 seller/landlord, that substantially adversely affects the ability of
31 the buyer/tenant to perform under the terms of any seller/landlord
32 financing.

33 (b) A buyer's/tenant's agent owes no duty to conduct an independent
34 investigation of the buyer's/tenant's financial condition for the
35 benefit of the seller/landlord and owes no duty to independently verify
36 the accuracy or completeness of statements made by the buyer/tenant, or
37 other information obtained from any source reasonably believed by the
38 licensee to be reliable.

1 (3) A buyer's/tenant's agent may show properties in which the
2 buyer/tenant is interested to other prospective buyers or tenants
3 without breaching any duty or obligation to the buyer/tenant. A
4 buyer's/tenant's agent's assistance to competing buyers or tenants in
5 making offers for and entering into agreements to purchase properties
6 in which any other buyer/tenant represented by the buyer's/tenant's
7 agent is interested is not a breach of any duty or obligation to a
8 buyer/tenant.

9 NEW SECTION. **Sec. 5. DUTIES OF A DUAL AGENT.** (1) A licensee may
10 act as a dual agent only with the written consent of both the
11 seller/landlord and the buyer/tenant in the transaction, and the
12 written consent may not be waived. The written consent must include a
13 statement of the licensee's duties and responsibilities and describe
14 the amount of the broker's compensation and identify the party
15 obligated to pay the compensation.

16 (2) A dual agent represents both the seller/landlord and the
17 buyer/tenant and unless otherwise agreed in writing signed by the
18 licensee's principal after the disclosures required by section 2(5) of
19 this act have been made, has the following limited duties and
20 obligations:

21 (a) Exercise reasonable skill and care for both principals;

22 (b) Deal with both principals at all times in good faith;

23 (c) After a purchase and sale agreement or lease is entered into by
24 the principals, take no action that is adverse or detrimental to the
25 transaction;

26 (d) Advise both principals to obtain expert advice on material
27 matters that are outside the scope of the brokerage relationship;

28 (e) Disclose to the respective principal in a timely manner all
29 material facts that the agent has agreed in writing to investigate for
30 such principal, and items described in section 9(3) of this act;

31 (f) Seek a buyer/tenant to purchase or lease the
32 seller's/landlord's property at a price, terms, and conditions
33 acceptable to the seller/landlord, except that the licensee is not
34 obligated to seek additional offers to purchase or lease the property
35 while the property is subject to an existing purchase and sale
36 agreement or lease;

37 (g) Seek for the buyer a property for purchase, and for the tenant,
38 a property to lease, at a price, terms, and conditions that are

1 acceptable to the buyer/tenant, except that the licensee is not
2 obligated to seek other properties while the buyer/tenant is a party to
3 an existing purchase and sale agreement or lease;

4 (h) Present all written offers to and from each principal in a
5 timely manner regardless of whether the principal is already a party to
6 an existing purchase and sale agreement or lease;

7 (i) Disclose to the seller/landlord all existing material facts
8 actually known by the licensee and not reasonably ascertainable to the
9 seller/landlord that substantially adversely affect the ability of the
10 buyer/tenant to perform under the terms of any seller/landlord
11 financing or the terms of the lease;

12 (j) Disclose to the buyer/tenant in a timely manner all existing
13 material facts actually known by the buyer's/tenant's agent and which
14 are not reasonably ascertainable to the buyer/tenant, including without
15 limitation material facts regarding the condition of the property, and
16 items described in section 9(3) of this act;

17 (k) Not disclose any confidential information from or about either
18 principal, except with the principal's consent, even after termination
19 of the brokerage relationship; and

20 (l) Account to each principal in a timely manner for all money and
21 property received from, or on behalf of, each principal.

22 (3) Notwithstanding any other provision in this chapter to the
23 contrary, a dual agent may not disclose to any party of the transaction
24 confidential information about the other party to the transaction.
25 Information required to be disclosed under sections 3(1)(i) and 4(1)(h)
26 of this act is not confidential information.

27 (4) In a transaction in which different licensees affiliated with
28 the same broker represent different parties, the broker is a dual agent
29 and each affiliated licensee shall represent only the party with whom
30 the licensee has a brokerage relationship, unless all parties agree
31 otherwise in writing.

32 NEW SECTION. **Sec. 6.** DURATION OF BROKERAGE RELATIONSHIP. (1) A
33 brokerage relationship commences when the licensee agrees to provide
34 brokerage services to a principal and shall continue until performance,
35 completion, expiration, or termination of the agency agreement in
36 accordance with its terms.

1 (2) A licensee owes no further duty or obligation after termination
2 of the brokerage relationship, except as otherwise agreed in writing,
3 and as follows:

4 (a) Accounting for all moneys and property received during the
5 relationship; and

6 (b) Keeping confidential all confidential information.

7 (3) Nothing in this section affects an agreement between the
8 parties regarding the payment of compensation during or after the
9 brokerage relationship.

10 NEW SECTION. **Sec. 7.** COMPENSATION. (1) In any real estate
11 transaction, the broker's compensation may be paid by the
12 seller/landlord, and/or the buyer/tenant, and/or a third party, and/or
13 by sharing the compensation between brokers.

14 (2) An agreement to pay, or the payment of, compensation does not
15 establish an agency relationship between the party who agrees to pay,
16 or pays, the compensation and the broker or any affiliated licensee.

17 (3) A seller/landlord may agree that a seller's/landlord's broker
18 may share with another seller's/landlord's and/or a buyer's/tenant's
19 broker the compensation paid by the seller/landlord.

20 (4) A buyer/tenant may agree that a buyer's/tenant's broker may
21 share with another buyer's/tenant's and/or seller's/landlord's broker
22 the compensation paid by the buyer/tenant.

23 (5) A broker may be compensated by more than one party for services
24 in a transaction, if those parties consent in writing at or before the
25 time of entering into a purchase and sale agreement or lease.

26 (6) An agreement for a buyer's/tenant's broker to receive
27 compensation based on the purchase price or rents charged is not a
28 breach of any duty or obligation to the buyer/tenant.

29 NEW SECTION. **Sec. 8.** VICARIOUS LIABILITY. (1) A principal is not
30 liable for an act, error, or omission by the principal's agent or
31 subagent arising out of a brokerage relationship unless the principal
32 expressly consented to the act, error, or omission.

33 (2) A licensee is not liable for an act, error, or omission of a
34 subagent under this chapter, unless the licensee knew of the act,
35 error, or omission. This section does not limit the liability of a
36 broker for an act, error, or omission by an affiliated licensee under
37 his or her supervision.

1 NEW SECTION. **Sec. 9.** IMPUTED KNOWLEDGE AND NOTICE. (1) A
2 principal is not deemed to have knowledge or notice of any facts known
3 by a principal's agent or subagent, unless the principal has actual
4 knowledge or notice of those facts.

5 (2) A licensee is not deemed to have knowledge or notice of any
6 facts known by a subagent, unless the licensee has actual knowledge or
7 notice of those facts.

8 (3) Notwithstanding subsections (1) and (2) of this section,
9 communication to or from a principal's agent regarding the other
10 party's offer, acceptance of offer, refusal of offer, counteroffer,
11 withdrawal of offer, any extension of time periods, a disclosure
12 statement under chapter 64.06 RCW, or other communications with persons
13 or entities named in the purchase and sale agreement or lease
14 constitutes notice to and knowledge of the licensee's principal. This
15 subsection does not alter any legal or contractual provision requiring
16 written notice.

17 NEW SECTION. **Sec. 10.** AFFILIATED LICENSEES. (1) All affiliated
18 licensees to the extent allowed by their license, have the same duties
19 and responsibilities to the parties as the broker under this chapter,
20 except as provided in section 5(4) of this act.

21 (2) All affiliated licensees have the same protection from
22 vicarious liability as their broker.

23 NEW SECTION. **Sec. 11.** CONSTRUCTION. This chapter applies to the
24 exclusion of common law duties and responsibilities of principal and
25 agent which have to this date been applied to real estate brokers
26 affiliated licensees and their principals. Nothing in this chapter
27 affects the obligations and responsibilities of a licensee while
28 engaging in the authorized or unauthorized practice of law as
29 determined by the Washington courts.

30 NEW SECTION. **Sec. 12.** This chapter applies to brokerage
31 relationships first entered into after the effective date of this act,
32 unless the licensee and the licensee's principal agree in writing that,
33 commencing with the effective date of this act, this chapter will apply
34 to a brokerage relationship which is entered into prior to the
35 effective date of this act.

1 NEW SECTION. **Sec. 13.** CAPTIONS. Captions used in this chapter do
2 not constitute any part of the law.

3 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
4 constitute a new chapter in Title 18 RCW.

5 NEW SECTION. **Sec. 15.** This act shall take effect January 1, 1996.

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