
SUBSTITUTE HOUSE BILL 2689

State of Washington 61st Legislature 2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Goodman, Maxwell, Kenney, and Kelley)

READ FIRST TIME 01/29/10.

1 AN ACT Relating to modifying agency relationship provisions to
2 clarify broker and licensee terms; amending RCW 18.86.010, 18.86.020,
3 18.86.040, 18.86.050, 18.86.060, 18.86.080, 18.86.090, 18.86.100, and
4 18.86.120; and providing an effective date.

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

6 **Sec. 1.** RCW 18.86.010 and 1996 c 179 s 1 are each amended to read
7 as follows:

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

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

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

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

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

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

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

9 (a) Was acquired by the licensee during the course of an agency
10 relationship with the principal;

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

12 (c) The principal has not disclosed or authorized to be disclosed
13 to third parties;

14 (d) Would, if disclosed, operate to the detriment of the principal;
15 and

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

18 (7) "Designated broker" means:

19 (a) A natural person who owns a sole proprietorship real estate
20 firm; or

21 (b) A natural person with a controlling interest in the firm who is
22 designated by a legally recognized business entity to act as a
23 designated broker on behalf of the real estate firm, and whose managing
24 broker's license receives an endorsement from the department of
25 "designated broker," as this term is defined in chapter 18.85 RCW.

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

28 ~~((+8))~~ (9) "Licensee" means a ((real-estate)) broker, ((associate
29 real-estate)) managing broker, or ((real-estate-salesperson)) real
30 estate firm, as those terms are defined in chapter 18.85 RCW.

31 ~~((+9))~~ (10) "Material fact" means information that substantially
32 adversely affects the value of the property or a party's ability to
33 perform its obligations in a real estate transaction, or operates to
34 materially impair or defeat the purpose of the transaction. The fact
35 or suspicion that the property, or any neighboring property, is or was
36 the site of a murder, suicide or other death, rape or other sex crime,
37 assault or other violent crime, robbery or burglary, illegal drug

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

4 ~~((+10+))~~ (11) "Principal" means a buyer or a seller who has entered
5 into an agency relationship with a licensee.

6 ~~((+11+))~~ (12) "Real estate brokerage services" means the rendering
7 of services for which a real estate license is required under chapter
8 18.85 RCW.

9 ~~((+12+))~~ (13) "Real estate firm" means a recognized business
10 entity, as that term is defined in chapter 18.85 RCW.

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

17 ~~((+13+))~~ (15) "Seller" means an actual or prospective seller in a
18 real estate transaction, or an actual or prospective landlord in a real
19 estate rental or lease transaction, as applicable.

20 ~~((+14+))~~ (16) "Seller's agent" means a licensee who has entered
21 into an agency relationship with only the seller in a real estate
22 transaction, and includes subagents engaged by a seller's agent.

23 ~~((+15+))~~ (17) "Subagent" means a licensee who is engaged to act on
24 behalf of a principal by the principal's agent where the principal has
25 authorized the agent in writing to appoint subagents.

26 **Sec. 2.** RCW 18.86.020 and 1997 c 217 s 1 are each amended to read
27 as follows:

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

30 (a) Licensee has entered into a written agency agreement with the
31 seller, in which case the licensee is a seller's agent;

32 (b) Licensee has entered into a subagency agreement with the
33 seller's agent, in which case the licensee is a seller's agent;

34 (c) Licensee has entered into a written agency agreement with both
35 parties, in which case the licensee is a dual agent;

36 (d) Licensee is the seller or one of the sellers; or

1 (e) Parties agree otherwise in writing after the licensee has
2 complied with RCW 18.86.030(1)(f).

3 (2) In a transaction in which different licensees affiliated with
4 the same (~~broker~~) firm represent different parties, the firm's
5 designated broker is a dual agent, and must obtain the written consent
6 of both parties as required under RCW 18.86.060. In such a case, each
7 licensee shall solely represent the party with whom the (~~licensee~~)
8 broker or managing broker has an agency relationship, unless all
9 parties agree in writing that both licensees are dual agents.

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

16 **Sec. 3.** RCW 18.86.040 and 1997 c 217 s 2 are each amended to read
17 as follows:

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

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

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

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

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

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

36 (2)(a) The showing of properties not owned by the seller to

1 prospective buyers or the listing of competing properties for sale by
2 a seller's agent does not in and of itself breach the duty of loyalty
3 to the seller or create a conflict of interest.

4 (b) The representation of more than one seller by different
5 licensees affiliated with the same (~~broker~~) firm in competing
6 transactions involving the same buyer does not in and of itself breach
7 the duty of loyalty to the sellers or create a conflict of interest.

8 **Sec. 4.** RCW 18.86.050 and 1997 c 217 s 3 are each amended to read
9 as follows:

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

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

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

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

19 (d) Not to disclose any confidential information from or about the
20 buyer, except under subpoena or court order, even after termination of
21 the agency relationship; and

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

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

33 (b) The representation of more than one buyer by different
34 licensees affiliated with the same (~~broker~~) firm in competing
35 transactions involving the same property does not in and of itself
36 breach the duty of loyalty to the buyers or create a conflict of
37 interest.

1 **Sec. 5.** RCW 18.86.060 and 1997 c 217 s 4 are each amended to read
2 as follows:

3 (1) Notwithstanding any other provision of this chapter, a licensee
4 may act as a dual agent only with the written consent of both parties
5 to the transaction after the dual agent has complied with RCW
6 18.86.030(1)(f), which consent must include a statement of the terms of
7 compensation.

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

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

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

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

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

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

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

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

36 (b) The representation of more than one seller by different
37 licensees affiliated with the same (~~broker~~) firm in competing

1 transactions involving the same buyer does not in and of itself
2 constitute action that is adverse or detrimental to the sellers or
3 create a conflict of interest.

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

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

14 **Sec. 6.** RCW 18.86.080 and 1997 c 217 s 6 are each amended to read
15 as follows:

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

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

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

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

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

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

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

1 **Sec. 7.** RCW 18.86.090 and 1996 c 179 s 9 are each amended to read
2 as follows:

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

6 (a) Unless the principal participated in or authorized the act,
7 error, or omission; or

8 (b) Except to the extent that: (i) The principal benefited from
9 the act, error, or omission; and (ii) the court determines that it is
10 highly probable that the claimant would be unable to enforce a judgment
11 against the agent or subagent.

12 (2) A licensee is not liable for an act, error, or omission of a
13 subagent under this chapter, unless the licensee participated in or
14 authorized the act, error or omission. This subsection does not limit
15 the liability of a (~~real estate~~) designated broker for an act, error,
16 or omission by (~~an associate real estate~~) any affiliated broker or
17 (~~real estate salesperson licensed to that~~) managing broker.

18 **Sec. 8.** RCW 18.86.100 and 1996 c 179 s 10 are each amended to read
19 as follows:

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

23 (2) Unless otherwise agreed to in writing, a licensee does not have
24 knowledge or notice of any facts known by a subagent that are not
25 actually known by the licensee. This subsection does not limit the
26 knowledge imputed to a (~~real estate~~) designated broker of any facts
27 known by (~~an associate real estate~~) any affiliated broker or (~~real
28 estate salesperson licensed to such~~) managing broker.

29 **Sec. 9.** RCW 18.86.120 and 1997 c 217 s 7 are each amended to read
30 as follows:

31 The pamphlet required under RCW 18.86.030(1)(f) shall consist of
32 the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040
33 through 18.86.110 with a separate cover page. The pamphlet shall be 8
34 1/2 by 11 inches in size, the text shall be in print no smaller than
35 10-point type, the cover page shall be in print no smaller than 12-

1 point type, and the title of the cover page "The Law of Real Estate
2 Agency" shall be in print no smaller than 18-point type. The cover
3 page shall be in the following form:

4 **The Law of Real Estate Agency**

5 This pamphlet describes your legal rights in dealing
6 with a real estate (~~broker or salesperson~~) licensee.

7 Please read it carefully before signing any documents.

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

9 Sec. 1. Definitions. Defines the specific terms used in the
10 law.

11 Sec. 2. Relationships between Licensees and the Public. States
12 that a licensee who works with a buyer or tenant represents
13 that buyer or tenant--unless the licensee is the listing agent,
14 a seller's subagent, a dual agent, the seller personally or the
15 parties agree otherwise. Also states that in a transaction
16 involving two different licensees affiliated with the same
17 (~~broker~~) firm, the designated broker is a dual agent and each
18 (~~licensee~~) broker or managing broker solely represents his or
19 her client--unless the parties agree in writing that both
20 licensees are dual agents.

21 Sec. 3. Duties of a Licensee Generally. Prescribes the duties
22 that are owed by all licensees, regardless of who the licensee
23 represents. Requires disclosure of the licensee's agency
24 relationship in a specific transaction.

25 Sec. 4. Duties of a Seller's Agent. Prescribes the additional
26 duties of a licensee representing the seller or landlord only.

27 Sec. 5. Duties of a Buyer's Agent. Prescribes the additional
28 duties of a licensee representing the buyer or tenant only.

29 Sec. 6. Duties of a Dual Agent. Prescribes the additional
30 duties of a licensee representing both parties in the same
31 transaction, and requires the written consent of both parties
32 to the licensee acting as a dual agent.

33 Sec. 7. Duration of Agency Relationship. Describes when an

1 agency relationship begins and ends. Provides that the duties
2 of accounting and confidentiality continue after the
3 termination of an agency relationship.

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

10 Sec. 9. Vicarious Liability. Eliminates the common law
11 liability of a party for the conduct of the party's agent or
12 subagent, unless the agent or subagent is insolvent. Also
13 limits the liability of a (~~broker~~) firm for the conduct of a
14 subagent (~~associated~~) affiliated with a different (~~broker~~)
15 firm.

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

19 Sec. 11. Interpretation. This law replaces the fiduciary
20 duties owed by an agent to a principal under the common law, to
21 the extent that it conflicts with the common law.

22 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2010.

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