
SENATE BILL 5189

State of Washington

66th Legislature

2019 Regular Session

By Senators Hasegawa and Saldaña

1 AN ACT Relating to prohibiting dual agency in certain real estate
2 transactions; amending RCW 18.85.361 and 18.86.060; adding a new
3 section to chapter 18.86 RCW; creating a new section; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that Washington
7 state's commercial real estate brokerage market has dramatically
8 transformed over the last decade and includes some of the most
9 competitive leasing markets in the country. This often negatively
10 impacts businesses, especially immigrant-owned and traditionally
11 underserved businesses in their capacities as buyers of commercial
12 property, as buyer is defined in RCW 18.86.010.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.86
14 RCW to read as follows:

15 (1) A broker may not represent a party to a commercial real
16 estate transaction if the representation involves a conflict of
17 interest. A concurrent conflict of interest exists if:

18 (a) The representation of one party to the commercial real estate
19 transaction will be directly or indirectly adverse to another party
20 to the commercial real estate transaction, including but not limited

1 to the simultaneous representation of the landlord/lessor and
2 prospective tenant in a commercial leasing transaction, or the
3 representation of the property owner/seller and prospective purchaser
4 in a for-sale transaction, each of which is deemed inherently
5 adversarial under this section;

6 (b) There is significant risk that the representation of one or
7 more parties involved in the commercial real estate transaction will
8 be limited by the broker's fiduciary statutory duties under chapter
9 18.86 RCW to another party to the transaction, a third party, or a
10 personal interest of the broker; or

11 (c) The brokerage firm, or any of its affiliates, partnerships,
12 subsidiaries or other related entities, has a direct or indirect
13 ownership interest in any property that may be a viable potential
14 alternative for the buyer, the lessee, or both.

15 (2)(a) If a broker is prohibited from representing a party to a
16 transaction under subsection (1) of this section, no broker in the
17 same firm may represent that party, unless the prohibition is based
18 on the personal interest of the broker and there is not a significant
19 risk of limiting the representation of the party.

20 (b) When a broker has terminated an association with a firm, the
21 firm is no longer prohibited from representing a party that the
22 formerly associated broker was prohibited from representing, unless
23 the transaction is the same or substantially similar.

24 (3) A violation of this section constitutes a violation under RCW
25 18.85.361.

26 (4) For the purposes of this section, "commercial real estate"
27 has the same meaning as in RCW 18.85.011.

28 (5) This section does not apply to commercial real estate
29 transactions that take place in counties with a population of less
30 than one hundred thousand.

31 (6) For purposes of this section "broker" means a licensed
32 commercial real estate broker, managing broker, or brokerage firm and
33 any commercial real estate agent working under the managing broker or
34 brokerage firm.

35 **Sec. 3.** RCW 18.85.361 and 2008 c 23 s 32 are each amended to
36 read as follows:

37 In addition to the unprofessional conduct described in RCW
38 18.235.130, the director may take disciplinary action against any
39 person engaged in the business or acting in the capacity of a real

1 estate broker, managing broker, designated broker, or real estate
2 firm, regardless of whether the transaction was for the person's own
3 account or in a capacity as broker, managing broker, designated
4 broker, or real estate firm, and may impose any of the sanctions and
5 fines specified in RCW 18.235.110 for any holder or applicant who is
6 guilty of:

7 (1) Violating any of the provisions of this chapter or any lawful
8 rules made by the director pursuant thereto or violating a provision
9 of chapter 64.36, 19.105, or 18.235 RCW (~~(e)~~), RCW 18.86.030 or
10 section 2 of this act, or the rules adopted under those chapters or
11 sections;

12 (2) Making, printing, publishing, distributing, or causing,
13 authorizing, or knowingly permitting the making, printing,
14 publication or distribution of false statements, descriptions or
15 promises of such character as to reasonably induce any person to act
16 thereon, if the statements, descriptions, or promises purport to be
17 made or to be performed by either the licensee or his or her
18 principal and the licensee then knew or, by the exercise of
19 reasonable care and inquiry, could have known, of the falsity of the
20 statements, descriptions or promises;

21 (3) Knowingly committing, or being a party to, any material
22 fraud, misrepresentation, concealment, conspiracy, collusion, trick,
23 scheme, or device whereby any other person lawfully relies upon the
24 word, representation or conduct of the licensee;

25 (4) Accepting the services of, or continuing in a representative
26 capacity, any broker or managing broker who has not been granted a
27 license, or after his or her license has been revoked or during a
28 suspension thereof;

29 (5) Conversion of any money, contract, deed, note, mortgage, or
30 abstract or other evidence of title, to the person's own use or to
31 the use of that person's principal or of any other person, when
32 delivered in trust or on condition, in violation of the trust or
33 before the happening of the condition; and failure to return any
34 money or contract, deed, note, mortgage, abstract, or other evidence
35 of title within thirty days after the owner thereof is entitled
36 thereto, and makes demand therefor, is prima facie evidence of such
37 conversion;

38 (6) Failing, upon demand, to disclose any information within the
39 person's knowledge, or to produce any document, book, or record in

1 the person's possession for inspection by the director or the
2 director's authorized representatives acting by authority of law;

3 (7) Continuing to sell any real estate, or operating according to
4 a plan of selling, whereby the interests of the public are
5 endangered, after the director has, by order in writing, stated
6 objections thereto;

7 (8) Advertising in any manner without including the real estate
8 firm's name or assumed name as licensed in a clear and conspicuous
9 manner in the advertisement; except, that real estate brokers,
10 managing brokers, or firms advertising their personally owned real
11 property must only disclose that they hold a real estate license;

12 (9) Accepting other than cash or its equivalent as earnest money
13 unless that fact is communicated to the owner before the owner's
14 acceptance of the offer to purchase, and such fact is shown in the
15 purchase and sale agreement;

16 (10) Charging or accepting compensation from more than one party
17 in any one transaction without first making full disclosure in
18 writing of all the facts to all the parties interested in the
19 transaction;

20 (11) Accepting, taking, or charging any undisclosed commission,
21 rebate, or direct profit on expenditures made for the principal;

22 (12) Accepting employment or compensation for appraisal of real
23 property contingent upon reporting a predetermined value;

24 (13) Issuing a report on any real property in which the broker,
25 managing broker, or real estate firm has an interest unless that
26 interest is clearly stated in the report;

27 (14) Misrepresentation of membership in any state or national
28 real estate association;

29 (15) Discrimination against any person in hiring or in real
30 estate brokerage service activity, on the basis of any of the
31 provisions of any local, county, state, or federal antidiscrimination
32 law;

33 (16) Failing to keep an escrow or trustee account of funds
34 deposited relating to a real estate transaction, for a period of
35 three years, showing to whom paid, and other pertinent information as
36 the director may require, such records to be available to the
37 director, or the director's representatives, on demand, or upon
38 written notice given to the bank;

1 (17) In the case of a firm and its designated broker, failing to
2 preserve records relating to any real estate transaction for three
3 years following the submission of the records to the firm;

4 (18) Failing to furnish a copy of any listing, sale, lease, or
5 other contract relevant to a real estate transaction to all
6 signatories thereof within a reasonable time following execution;

7 (19) In the case of a broker or managing broker, acceptance of a
8 commission or any valuable consideration for the performance of any
9 acts specified in this chapter, from any person, except the licensed
10 real estate firm with whom the broker or managing broker is licensed;

11 (20) To direct any transaction involving his or her principal, to
12 any lending institution for financing or to any escrow company, in
13 expectation of receiving a kickback or rebate therefrom, without
14 first disclosing the expectation to his or her principal;

15 (21) Buying, selling, or leasing directly, or through a third
16 party, any interest in real property without disclosing in writing
17 that the person is a real estate licensee;

18 (22) In the case of real estate firms, and managing and
19 designated brokers, failing to exercise adequate supervision over the
20 activities of their brokers and managing brokers within the scope of
21 this chapter;

22 (23) Any conduct in a real estate transaction which demonstrates
23 bad faith, dishonesty, untrustworthiness, or incompetence;

24 (24) Acting as a vehicle dealer, as defined in RCW 46.70.011,
25 without having a license to do so; or

26 (25) Failing to ensure that the title is transferred under
27 chapter 46.12 RCW when engaging in a transaction involving a mobile
28 or manufactured home as a broker, managing or designated broker, or
29 firm.

30 **Sec. 4.** RCW 18.86.060 and 2013 c 58 s 7 are each amended to read
31 as follows:

32 (1) Notwithstanding any other provision of this chapter, a broker
33 may act as a dual agent only with the written ~~((consent of))~~ conflict
34 of interest waiver from both parties ~~((to the transaction after the~~
35 ~~dual agent has complied with RCW 18.86.030(1)(f), which consent must~~
36 ~~include a statement of the terms of compensation))~~, as well as their
37 respective legal counsel. The waiver shall clearly define that each
38 party is waiving their right to legal remedies against the dual agent
39 broker, managing broker and brokerage firm. The waiver must state the

1 following in bold 16-point font: "Buyer/lessee and seller/lessor
2 hereby waive any and all legal remedies against the dual agent
3 broker, managing broker and brokerage company. Each party understands
4 that it is impossible for a dual agent to represent, as a fiduciary,
5 two opposing parties. The state of Washington highly recommends an
6 independent fiduciary advisor for both parties."

7 (2) Provided subsection (1) of this section, unless additional
8 duties are agreed to in writing signed by a dual agent, the duties of
9 a dual agent are limited to those set forth in RCW 18.86.030 and the
10 following, which may not be waived except as expressly set forth in
11 (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 additional conflicts
15 of interest that may arise during the transaction, including but not
16 limited to the broker of one party acting in the capacity of an
17 undisclosed principal in the same transaction;

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

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

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

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

37 (3)(a) The showing of properties not owned by the seller to
38 prospective buyers or the listing of competing properties for sale by
39 a dual agent does not in and of itself constitute action that is

1 adverse or detrimental to the seller or create a conflict of
2 interest.

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

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

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

18 (5) (a) This section does not apply to:

19 (i) Commercial real estate transactions in counties with a
20 population of one hundred thousand or less; or

21 (ii) Commercial real estate transactions involving multiple-unit
22 housing. For the purposes of this subsection (a) (ii), "multiple-unit
23 housing" means a building having four or more dwelling units not
24 designed or used as transient accommodations and not including hotels
25 and motels. Multifamily units may result from new construction or
26 rehabilitated or conversion of vacant, underutilized, or substandard
27 buildings to multifamily housing as defined in RCW 84.14.010.

28 (b) For the purposes of this subsection, "commercial real estate"
29 has the same meaning as in RCW 18.85.011.

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