

HOUSE BILL REPORT

2EHB 1659

As Passed House:

February 8, 1996

Title: An act relating to real estate brokerage relationships.

Brief Description: Regulating real estate brokerage relationships.

Sponsors: Representatives Mielke, Quall, Crouse, Costa, Kremen and Cooke.

Brief History:

Committee Activity:

Commerce & Labor: 1/24/96, 1/29/96 [DPA].

Floor Activity:

Passed House: 2/8/96, 94-0.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 11 members: Representatives McMorris, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Goldsmith; Horn and Lisk.

Staff: Pam Madson (786-7166).

Background: The duties owed by a real estate broker or sales agent to a buyer, seller, landlord, or tenant are based on the common law of agency. Agency is a consensual relationship between two persons where one (the principal) empowers the other (the agent) to act, and the agent acts based on that authority. Agency relationships can be created expressly in writing or by words or conduct. Conduct that determines an agency relationship in real estate sales and leasing includes who pays the commission.

Duties owed by an agent to a principal in a real estate transaction include loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and accounting. The scope of these duties has evolved through the courts. In any given transaction, the duties owed may be unclear.

In the purchase and sale of real estate, the issue of who an agent represents may also be unclear. Licensed real estate brokers, affiliated brokers, and sales people may be

involved in a firm that deals with both buyers and sellers or landlords and tenants. It may not be clear to the buyers or sellers who is representing their interests.

Summary of Bill: The duties and the relationship of an agent to the principal (buyer or seller, landlord or tenant) are established in statute and supersede the common law rules applied to real estate licensees to the extent that they are inconsistent with the statute.

An agent may represent only the buyer or the seller unless otherwise agreed in writing. Absent an agreement, the agent represents the buyer. A summary pamphlet of the statutory duties must be provided to all parties by the real estate agent before any agency agreements or real estate offers are signed, before a party consents to dual agency, or before a party waives any rights designated as waivable.

General Duties of a Licensee

Certain duties apply to real estate licensees generally when performing real estate brokerage services, including the duty to

- (1) exercise reasonable skill and care;
- (2) deal honestly and in good faith;
- (3) present all written offers, notices, and other communications in a timely manner;
- (4) disclose all material facts known by the licensee and not easily ascertainable to a party;
- (5) account for all money and property received in a timely manner;
- (6) provide a pamphlet on the law of real estate agency to all parties; and
- (7) disclose what party a licensee represents, if any, in a real estate transaction.

These duties cannot be waived.

The agent is not obligated to conduct an independent investigation of the property or of either party's financial condition. The agent has no duty to verify any information the agent reasonably believes to be reliable.

Duties of an Agent to the Seller or Buyer and Duties of a Dual Agent

Certain duties apply between a licensee agent and the seller or a licensee agent and the buyer or in a dual agency relationship, including the duty to

- (1) be loyal by taking no action that would be adverse to the client;
- (2) disclose timely, any conflicts of interest;
- (3) advise the client to get expert advice on matters relating to the transaction that are beyond the agent's expertise; and

- (4) refrain from disclosing confidential information about the client except under subpoena or court order.

These duties cannot be waived. The only duty that can be waived is the duty to make a good faith and continuous effort to seek a buyer for a seller or a seller for a buyer.

It is not a breach of duty to the principal for the agent, in the case of a seller, to show or list competing properties, or, in the case of a buyer, to show properties to competing buyers.

A real estate licensee may represent both the buyer and the seller if all parties agree in writing. The consent to this dual agency must include the terms of compensation.

Duration of the Agency Relationship

The agency relationship begins when the licensee performs brokerage services and continues until the licensee completes the services, the agreed upon period of service is ended, or the parties agree to termination. Once the brokerage relationship is terminated, an agent is obligated to account for all moneys and property received and to keep appropriate information confidential.

Compensation

Payment of compensation is not a factor in determining the existence of an agency relationship. A broker may be paid by any party to the transaction and may be paid by more than one party if the parties agree. A buyer's agent may be paid based on the purchase price without breaching any duty owed to the buyer.

Vicarious Liability

In the chain of relationships that operate in a real estate transaction, the liability of each party is addressed.

A principal (buyer or seller) is liable for the actions of the agent (real estate licensee) only if the principal participated in or authorized the act, or the principal benefitted from the act and a court determines that no judgment could be enforced against the agent or a subagent. A licensee agent is not liable for the acts of a subagent unless the licensee participated in or authorized the act.

Imputed Knowledge

There is no presumption of knowledge on the part of the principal (buyer or seller) of facts known by the agent or subagent of the principal.

The contents of the pamphlet on real estate agency law that must be provided to sellers and buyers are contained in the law.

The director of the Department of Licensing may impose sanctions on a licensee for violation of the laws governing real estate brokerage relationships.

The provisions of this act apply when an real estate licensee represents a landlord or a tenant in a lease arrangement.

Only those agency relationships entered into after January 1, 1997, unless otherwise agreed in writing as to agency relationship entered into before that date, are subject to this law.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 1997.

Testimony For: A lot of hard work has gone into addressing legislative concerns from the last session by all interested parties. Industry had concerns. Duties and responsibilities of real estate agents were very vague and unclear. Consumers had no knowledge of what the agent's duties and responsibilities really were. This bill clarifies those duties. Most buyers and sellers have no knowledge about the notions of vicarious liability and imputed knowledge. They do not know that the buyer or the seller could be responsible for what the agency says or does, including an agent misrepresentation. This legislation brings certainty to the public. They are in and out of the market every few years and don't really know what to expect. The most attractive feature of the legislation is that a person working with a licensee can assume that the licensee is working for that person. Without this legislation, that has not been the case. Historically, real estate agents represented the seller whether they were working with the seller or not. This legislation allows natural business relationships to exist. The duties of licensees in the same real estate office representing the buyer and the seller in the same transaction are defined. The bill is well organized and easy to read. Receiving a copy of this bill will be useful to the public.

Testimony Against: None.

Testified: Senator Pelz, prime sponsor; (pro) Glen Hudson, Washington Association of Realtors; Jim Corrello; and Chris Osborn.