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SENATE BILL 6653

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State of Washington                      54th Legislature                      1996 Regular Session

By Senators Bauer, Deccio, Pelz, Hale and Kohl

Read first time 01/22/96. Referred to Committee on Labor, Commerce & Trade.

1            AN ACT Relating to real estate brokerage relationships; amending  
2 RCW 18.85.230; adding a new chapter to Title 18 RCW; creating a new  
3 section; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

9 (c) The principal has not disclosed or authorized to be disclosed  
10 to third parties;

11 (d) Would, if disclosed, operate to the detriment of the principal;  
12 and

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

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

17 (8) "Licensee" means a real estate broker, associate real estate  
18 broker, or real estate salesperson, as those terms are defined in  
19 chapter 18.85 RCW.

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

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

32 (11) "Real estate brokerage services" means the rendering of  
33 services for which a real estate license is required under chapter  
34 18.85 RCW.

35 (12) "Real estate transaction" or "transaction" means an actual or  
36 prospective transaction involving a purchase, sale, option, or exchange  
37 of any interest in real property or a business opportunity, or a lease  
38 or rental of real property. For purposes of this chapter, a

1 prospective transaction does not exist until a written offer has been  
2 signed by at least one of the parties.

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

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

9 (15) "Subagent" means a licensee who is engaged to act on behalf of  
10 a principal by the principal's agent where the principal has authorized  
11 the agent in writing to appoint subagents.

12 NEW SECTION. **Sec. 2.** RELATIONSHIPS BETWEEN LICENSEES AND THE  
13 PUBLIC. (1) A licensee who performs real estate brokerage services for  
14 a buyer is a buyer's agent unless the:

15 (a) Licensee has entered into a written agency agreement with the  
16 seller;

17 (b) Licensee has entered into a subagency agreement with the  
18 seller's agent;

19 (c) Licensee has entered into a written agency agreement with both  
20 parties;

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

22 (e) Parties agree otherwise in writing after the licensee has  
23 complied with section 3(1)(f) of this act.

24 (2) In a transaction in which different licensees affiliated with  
25 the same broker represent different parties, the broker is a dual  
26 agent, and must obtain the written consent of both parties as required  
27 under section 6 of this act. In such a case, each licensee shall  
28 solely represent the party with whom the licensee has an agency  
29 relationship, unless all parties agree in writing that both licensees  
30 are dual agents.

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

1        NEW SECTION.        **Sec. 3. DUTIES OF A LICENSEE GENERALLY.**        (1)

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

5            (a) To exercise reasonable skill and care;

6            (b) To deal honestly and in good faith;

7            (c) To present all written offers, written notices and other  
8        written communications to and from either party in a timely manner,  
9        regardless of whether the property is subject to an existing contract  
10       for sale or the buyer is already a party to an existing contract to  
11       purchase;

12          (d) To disclose all existing material facts known by the licensee  
13       and not apparent or readily ascertainable to a party; provided that  
14       this subsection shall not be construed to imply any duty to investigate  
15       matters that the licensee has not agreed to investigate;

16          (e) To account in a timely manner for all money and property  
17       received from or on behalf of either party;

18          (f) To provide a pamphlet on the law of real estate agency in the  
19       form prescribed in section 13 of this act to all parties to whom the  
20       licensee renders real estate brokerage services, before the party signs  
21       an agency agreement with the licensee, signs an offer in a real estate  
22       transaction handled by the licensee, consents to dual agency, or waives  
23       any rights under section 2(1)(e), 4(1)(e), 5(1)(e), or 6(2)(e) or (f)  
24       of this act, whichever occurs earliest; and

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

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

1        NEW SECTION.    **Sec. 4.** DUTIES OF A SELLER'S AGENT.    (1) Unless  
2 additional duties are agreed to in writing signed by a seller's agent,  
3 the duties of a seller's agent are limited to those set forth in  
4 section 3 of this act and the following, which may not be waived except  
5 as expressly set forth in (e) of this subsection:

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

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

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

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

14        (e) Unless otherwise agreed to in writing after the seller's agent  
15 has complied with section 3(1)(f) of this act, to make a good faith and  
16 continuous effort to find a buyer for the property; except that a  
17 seller's agent is not obligated to seek additional offers to purchase  
18 the property while the property is subject to an existing contract for  
19 sale.

20        (2) A seller's agent may show alternative properties not owned by  
21 the seller to prospective buyers and may list competing properties for  
22 sale without breaching any duty to the seller.

23        NEW SECTION.    **Sec. 5.** DUTIES OF A BUYER'S AGENT.    (1) Unless  
24 additional duties are agreed to in writing signed by a buyer's agent,  
25 the duties of a buyer's agent are limited to those set forth in section  
26 3 of this act and the following, which may not be waived except as  
27 expressly set forth in (e) of this subsection:

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

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

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

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

36        (e) Unless otherwise agreed to in writing after the buyer's agent  
37 has complied with section 3(1)(f) of this act, to make a good faith and  
38 continuous effort to find a property for the buyer; except that a

1 buyer's agent is not obligated to seek additional properties to  
2 purchase while the buyer is a party to an existing contract to  
3 purchase.

4 (2) A buyer's agent may show properties in which the buyer is  
5 interested to other prospective buyers without breaching any duty to  
6 the buyer.

7 NEW SECTION. **Sec. 6. DUTIES OF A DUAL AGENT.** (1) A licensee may  
8 act as a dual agent only with the written consent of both parties to  
9 the transaction after the dual agent has complied with section 3(1)(f)  
10 of this act, which consent must include a statement of the terms of  
11 compensation.

12 (2) Unless additional duties are agreed to in writing signed by a  
13 dual agent, the duties of a dual agent are limited to those set forth  
14 in section 3 of this act and the following, which may not be waived  
15 except as expressly set forth in (e) and (f) of this subsection:

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

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

19 (c) To advise both parties to seek expert advice on matters  
20 relating to the transaction that are beyond the dual agent's 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 has  
25 complied with section 3(1)(f) of this act, to make a good faith and  
26 continuous effort to find a buyer for the property; except that a dual  
27 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 has  
31 complied with section 3(1)(f) of this act, to make a good faith and  
32 continuous effort to find a property for the buyer; except that a dual  
33 agent is not obligated to seek additional properties to purchase while  
34 the buyer is a party to an existing contract to purchase.

35 (3) A dual agent may show alternative properties not owned by the  
36 seller to prospective buyers and may list competing properties for sale  
37 without breaching any duty to the seller.

1 (4) A dual agent may show properties in which the buyer is  
2 interested to other prospective buyers without breaching any duty to  
3 the buyer.

4 NEW SECTION. **Sec. 7.** DURATION OF AGENCY RELATIONSHIP. (1) The  
5 agency relationships set forth in this chapter commence at the time  
6 that the licensee undertakes to provide real estate brokerage services  
7 to a principal and continue until the earlier of the following:

8 (a) Completion of performance by the licensee;

9 (b) Expiration of the term agreed upon by the parties; or

10 (c) Termination of the relationship by mutual agreement of the  
11 parties.

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

15 (a) Accounting for all moneys and property received during the  
16 relationship; and

17 (b) Not disclosing confidential information.

18 NEW SECTION. **Sec. 8.** COMPENSATION. (1) In any real estate  
19 transaction, the broker's compensation may be paid by the seller, the  
20 buyer, a third party, or by sharing the compensation between brokers.

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

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

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

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

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

34 (7) Nothing contained in this chapter obligates a buyer or seller  
35 to pay compensation to a licensee, unless the buyer or seller has  
36 entered into a written agreement with the licensee specifying the terms  
37 of such compensation.

1        NEW SECTION.    **Sec. 9.** VICARIOUS LIABILITY. (1) A principal is not  
2 liable for an act, error, or omission by an agent or subagent of the  
3 principal arising out of an agency relationship:

4        (a) Unless the principal participated in or authorized the act,  
5 error, or omission; or

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

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

18       NEW SECTION.    **Sec. 10.** IMPUTED KNOWLEDGE AND NOTICE. (1) Unless  
19 otherwise agreed to in writing, a principal does not have knowledge or  
20 notice of any facts known by an agent or subagent of the principal that  
21 are not actually known by the principal.

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

28       NEW SECTION.    **Sec. 11.** INTERPRETATION. This chapter supersedes  
29 only the duties of the parties under the common law, including  
30 fiduciary duties of an agent to a principal, to the extent inconsistent  
31 with this chapter. The common law continues to apply to the parties in  
32 all other respects. This chapter does not affect the duties of a  
33 licensee while engaging in the authorized or unauthorized practice of  
34 law as determined by the courts of this state. This chapter shall be  
35 construed broadly.





1 5. Duties of a Buyer's Agent. Prescribes the duties of a  
2 licensee representing the buyer or tenant only.

3 6. Duties of a Dual Agent. Prescribes the duties of a licensee  
4 representing both parties in the same transaction, and requires  
5 the consent of both parties to the licensee acting as a dual  
6 agent.

7 7. Duration of Agency Relationship. Describes when an agency  
8 relationship begins and ends. Provides that the duties of  
9 accounting and confidentiality continue after the termination  
10 of an agency relationship.

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

16 9. Vicarious Liability. Eliminates the common law liability of  
17 a party for the conduct of the party's agent or subagent,  
18 unless the agent or subagent is insolvent. Also limits the  
19 liability of a broker for the conduct of a subagent associated  
20 with a different broker.

21 10. Imputed Knowledge and Notice. Eliminates the common law  
22 rule that notice to or knowledge of an agent constitutes notice  
23 to or knowledge of the principal.

24 11. Interpretation. This law replaces the fiduciary duties  
25 owed by an agent to a principal under the common law, to the  
26 extent that it conflicts with the common law.

27 12. Application Date. This law has general application on  
28 January 1, 1997.

29 NEW SECTION. **Sec. 14.** VIOLATION OF LICENSING LAW. A violation of  
30 section 3 of this act is a violation of RCW 18.85.230.

31 NEW SECTION. **Sec. 15.** CAPTIONS NOT PART OF LAW. Captions used in  
32 this chapter do not constitute any part of the law.

33 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act shall  
34 constitute a new chapter in Title 18 RCW.

1        NEW SECTION.    **Sec. 17.** Chapter 18.-- RCW (sections 1 through 15 of  
2 this act) is intended to supersede WAC 308-124D-040.

3        **Sec. 18.** RCW 18.85.230 and 1990 c 85 s 1 are each amended to read  
4 as follows:

5        The director may, upon his or her own motion, and shall upon  
6 verified complaint in writing by any person, investigate the actions of  
7 any person engaged in the business or acting in the capacity of a real  
8 estate broker, associate real estate broker, or real estate  
9 salesperson, regardless of whether the transaction was for his or her  
10 own account or in his or her capacity as broker, associate real estate  
11 broker, or real estate salesperson, and may impose any one or more of  
12 the following sanctions: Suspend or revoke, levy a fine not to exceed  
13 one thousand dollars for each offense, require the completion of a  
14 course in a selected area of real estate practice relevant to the  
15 section of this chapter or rule violated, or deny the license of any  
16 holder or applicant who is guilty of:

17        (1) Obtaining a license by means of fraud, misrepresentation,  
18 concealment, or through the mistake or inadvertence of the director;

19        (2) Violating any of the provisions of this chapter or any lawful  
20 rules or regulations made by the director pursuant thereto or violating  
21 a provision of chapter 64.36, 19.105, or 58.19 RCW or section 3 of this  
22 act or the rules adopted under those chapters or section;

23        (3) Being convicted in a court of competent jurisdiction of this or  
24 any other state, or federal court, of forgery, embezzlement, obtaining  
25 money under false pretenses, bribery, larceny, extortion, conspiracy to  
26 defraud, or any similar offense or offenses: PROVIDED, That for the  
27 purposes of this section being convicted shall include all instances in  
28 which a plea of guilty or nolo contendere is the basis for the  
29 conviction, and all proceedings in which the sentence has been deferred  
30 or suspended;

31        (4) Making, printing, publishing, distributing, or causing,  
32 authorizing, or knowingly permitting the making, printing, publication  
33 or distribution of false statements, descriptions or promises of such  
34 character as to reasonably induce any person to act thereon, if the  
35 statements, descriptions or promises purport to be made or to be  
36 performed by either the licensee or his or her principal and the  
37 licensee then knew or, by the exercise of reasonable care and inquiry,

1 could have known, of the falsity of the statements, descriptions or  
2 promises;

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

7 (6) Accepting the services of, or continuing in a representative  
8 capacity, any associate broker or salesperson who has not been granted  
9 a license, or after his or her license has been revoked or during a  
10 suspension thereof;

11 (7) Conversion of any money, contract, deed, note, mortgage, or  
12 abstract or other evidence of title, to his or her own use or to the  
13 use of his or her principal or of any other person, when delivered to  
14 him or her in trust or on condition, in violation of the trust or  
15 before the happening of the condition; and failure to return any money  
16 or contract, deed, note, mortgage, abstract or other evidence of title  
17 within thirty days after the owner thereof is entitled thereto, and  
18 makes demand therefor, shall be prima facie evidence of such  
19 conversion;

20 (8) Failing, upon demand, to disclose any information within his or  
21 her knowledge to, or to produce any document, book or record in his or  
22 her possession for inspection of the director or his or her authorized  
23 representatives acting by authority of law;

24 (9) Continuing to sell any real estate, or operating according to  
25 a plan of selling, whereby the interests of the public are endangered,  
26 after the director has, by order in writing, stated objections thereto;

27 (10) Committing any act of fraudulent or dishonest dealing or a  
28 crime involving moral turpitude, and a certified copy of the final  
29 holding of any court of competent jurisdiction in such matter shall be  
30 conclusive evidence in any hearing under this chapter;

31 (11) Advertising in any manner without affixing the broker's name  
32 as licensed, and in the case of a salesperson or associate broker,  
33 without affixing the name of the broker as licensed for whom or under  
34 whom the salesperson or associate broker operates, to the  
35 advertisement; except, that a real estate broker, associate real estate  
36 broker, or real estate salesperson advertising their personally owned  
37 real property must only disclose that they hold a real estate license;

38 (12) Accepting other than cash or its equivalent as earnest money  
39 unless that fact is communicated to the owner prior to his or her

1 acceptance of the offer to purchase, and such fact is shown in the  
2 earnest money receipt;

3 (13) Charging or accepting compensation from more than one party in  
4 any one transaction without first making full disclosure in writing of  
5 all the facts to all the parties interested in the transaction;

6 (14) Accepting, taking or charging any undisclosed commission,  
7 rebate or direct profit on expenditures made for the principal;

8 (15) Accepting employment or compensation for appraisal of real  
9 property contingent upon reporting a predetermined value;

10 (16) Issuing an appraisal report on any real property in which the  
11 broker, associate broker, or salesperson has an interest unless his or  
12 her interest is clearly stated in the appraisal report;

13 (17) Misrepresentation of his or her membership in any state or  
14 national real estate association;

15 (18) Discrimination against any person in hiring or in sales  
16 activity, on the basis of race, color, creed or national origin, or  
17 violating any of the provisions of any state or federal  
18 antidiscrimination law;

19 (19) Failing to keep an escrow or trustee account of funds  
20 deposited with him or her relating to a real estate transaction, for a  
21 period of three years, showing to whom paid, and such other pertinent  
22 information as the director may require, such records to be available  
23 to the director, or his or her representatives, on demand, or upon  
24 written notice given to the bank;

25 (20) Failing to preserve for three years following its consummation  
26 records relating to any real estate transaction;

27 (21) Failing to furnish a copy of any listing, sale, lease or other  
28 contract relevant to a real estate transaction to all signatories  
29 thereof at the time of execution;

30 (22) Acceptance by a branch manager, associate broker, or  
31 salesperson of a commission or any valuable consideration for the  
32 performance of any acts specified in this chapter, from any person,  
33 except the licensed real estate broker with whom he or she is licensed;

34 (23) To direct any transaction involving his or her principal, to  
35 any lending institution for financing or to any escrow company, in  
36 expectation of receiving a kickback or rebate therefrom, without first  
37 disclosing such expectation to his or her principal;

1 (24) Buying, selling, or leasing directly, or through a third  
2 party, any interest in real property without disclosing in writing that  
3 he or she holds a real estate license;

4 (25) In the case of a broker licensee, failing to exercise adequate  
5 supervision over the activities of his or her licensed associate  
6 brokers and salespersons within the scope of this chapter;

7 (26) Any conduct in a real estate transaction which demonstrates  
8 bad faith, dishonesty, untrustworthiness or incompetency;

9 (27) Acting as a mobile home and travel trailer dealer or  
10 salesperson, as defined in RCW 46.70.011 as now or hereafter amended,  
11 without having a license to do so;

12 (28) Failing to assure that the title is transferred under chapter  
13 46.12 RCW when engaging in a transaction involving a mobile home as a  
14 broker, associate broker, or salesperson; or

15 (29) Violation of an order to cease and desist which is issued by  
16 the director under this chapter.

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