

HOUSE BILL ANALYSIS

HB 1955

Brief Description: Regulating real estate brokerage relationships

Sponsors: Representatives McMorris, Quall, Bush, and Hatfield

Hearing: February 27, 1997

BACKGROUND:

In 1996, the duties owed by real estate agents and brokers to buyers and sellers of real estate were established in statute and the agency relationships between real estate agents and brokers and their clients were defined and clarified. The law affects those agency relationships entered into after January 1, 1997.

An agent may represent only the buyer or the seller unless otherwise agreed in writing. Absent an agreement, the agent represents the buyer.

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.

It is not a breach of duty to the principal for the licensee 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.

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.

Written agreement for compensation

The law establishing agency relationships in real estate transactions does not obligate a buyer or a seller to pay compensation to a real estate licensee unless the parties have entered into a written agreement that sets out the terms of any compensation. Real estate transactions include both real estate sales and leases and rental of real property.

SUMMARY OF BILL:

Certain provisions of the law governing real estate brokerage relationships are clarified.

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

Duties owed by the licensee agent to the buyer, seller, or both are clarified as to circumstances that do not breach the duties owed. When a seller's agent shows property not owned by the seller to a prospective buyer or lists competing properties for sale, the seller's agent does not breach the duty of loyalty to the seller or create a conflict of interest. The same duties are not breached when a buyer's agent shows property in which the buyer is interested to other prospective buyers. When a dual agent engages in these activities for a buyer and a seller, these actions do not constitute actions that are adverse or detrimental to the client nor do these actions create a conflict of interest.

When different licensees associated with the same broker represent different sellers in competing transactions involving the same buyer, the duty of loyal to the sellers is not breached nor does this circumstance create a conflict of interest. These duties are not breached when different licensees associated with the same broker represent different buyers in competing transactions for the same property. For a dual agent in these circumstances, no conflict of interest occurs nor are these actions considered adverse or detrimental to the clients.

Duration of the Agency Relationship

The agency relationship may be terminated by either party upon notice from either party. Termination of the agency relationship does not affect the contractual rights established by the parties.

Written agreements for compensation

The reference to a written contract for compensation between a buyer or seller and the real estate agent is deleted to clarify that an agreement may be any enforceable agreement

including an oral agreement.

These changes to provisions of the law of real estate agency must be part of the required consumer information pamphlet as of January 1, 1998.

RULES AUTHORITY: The bill does not contain provisions addressing the rule-making powers of an agency.

FISCAL NOTE: Not requested.

EFFECTIVE DATE: The bill contains an emergency clause. Sections 1 - 6 take effect immediately. Section 8 takes effect ninety days after adjournment of session in which bill is passed. Section 7 takes effect January 1, 1998.