

SENATE BILL REPORT

SHB 1955

As Reported By Senate Committee On:
Commerce & Labor, April 3, 1997

Title: An act relating to real estate brokerage relationships including different licensees affiliated with the same broker representing different buyers and sellers in competing transactions involving the same property, termination of those relationships, and consumer information about those relationships.

Brief Description: Regulating real estate brokerage relationships.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Quall, Bush and Hatfield).

Brief History:

Committee Activity: Commerce & Labor: 4/1/97, 4/3/97 [DP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson, Franklin, Fraser, Heavey and Newhouse.

Staff: Aurora Almeda (786-7488)

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 in a timely manner, 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 loyalty 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 law on real estate agency relationships does not negate the requirement elsewhere in law that an agreement authorizing or employing a real estate licensee to purchase or sell real estate for compensation be in writing and signed by the seller or buyer.

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.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately, except Section 7, which takes effect January 1, 1998.

Testimony For: This bill clarifies the agency relationship between a broker and his or client. The clarifications about the duty of loyalty and conflict of interests in representation of a buyer or seller must be implemented by an emergency clause because of the new law recently in effect as of January 1997. These issues were not anticipated when drafting legislation last year.

Testimony Against: None.

Testified: PRO: Teri Hotvedt, Washington Association of Realtors; Doug Tival, attorney, John L. Scott.