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**SUBSTITUTE HOUSE BILL 1955**

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**State of Washington                      55th Legislature                      1997 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Quall, Bush and Hatfield)

Read first time 03/05/97.

1            AN ACT Relating to real estate brokerage relationships including  
2 different licensees affiliated with the same broker representing  
3 different buyers and sellers in competing transactions involving the  
4 same property, termination of those relationships, and consumer  
5 information about those relationships; amending RCW 18.86.020,  
6 18.86.040, 18.86.050, 18.86.060, 18.86.070, 18.86.080, and 18.86.120;  
7 creating a new section; providing an effective date; and declaring an  
8 emergency.

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

10            **Sec. 1.** RCW 18.86.020 and 1996 c 179 s 2 are each amended to read  
11 as follows:

12            (1) A licensee who performs real estate brokerage services for a  
13 buyer is a buyer's agent unless the:

14            (a) Licensee has entered into a written agency agreement with the  
15 seller, in which case the licensee is a seller's agent;

16            (b) Licensee has entered into a subagency agreement with the  
17 seller's agent, in which case the licensee is a seller's agent;

18            (c) Licensee has entered into a written agency agreement with both  
19 parties, in which case the licensee is a dual agent;

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

2 (e) Parties agree otherwise in writing after the licensee has  
3 complied with RCW 18.86.030(1)(f).

4 (2) In a transaction in which different licensees affiliated with  
5 the same broker represent different parties, the broker is a dual  
6 agent, and must obtain the written consent of both parties as required  
7 under RCW 18.86.060. In such a case, each licensee shall solely  
8 represent the party with whom the licensee has an agency relationship,  
9 unless all parties agree in writing that both licensees are dual  
10 agents.

11 (3) A licensee may work with a party in separate transactions  
12 pursuant to different relationships, including, but not limited to,  
13 representing a party in one transaction and at the same time not  
14 representing that party in a different transaction involving that  
15 party, if the licensee complies with this chapter in establishing the  
16 relationships for each transaction.

17 **Sec. 2.** RCW 18.86.040 and 1996 c 179 s 4 are each amended to read  
18 as follows:

19 (1) Unless additional duties are agreed to in writing signed by a  
20 seller's agent, the duties of a seller's agent are limited to those set  
21 forth in RCW 18.86.030 and the following, which may not be waived  
22 except as expressly set forth in (e) of this subsection:

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

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

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

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

31 (e) Unless otherwise agreed to in writing after the seller's agent  
32 has complied with RCW 18.86.030(1)(f), to make a good faith and  
33 continuous effort to find a buyer for the property; except that a  
34 seller's agent is not obligated to seek additional offers to purchase  
35 the property while the property is subject to an existing contract for  
36 sale.

37 (2) ~~((A seller's agent may show alternative properties not owned by  
38 the seller to prospective buyers and may list competing properties for~~

1 ~~sale without breaching any duty to the seller))~~ (a) The showing of  
2 properties not owned by the seller to prospective buyers or the listing  
3 of competing properties for sale by a seller's agent does not in and of  
4 itself breach the duty of loyalty to the seller or create a conflict of  
5 interest.

6 (b) The representation of more than one seller by different  
7 licensees affiliated with the same broker in competing transactions  
8 involving the same buyer does not in and of itself breach the duty of  
9 loyalty to the sellers or create a conflict of interest.

10 **Sec. 3.** RCW 18.86.050 and 1996 c 179 s 5 are each amended to read  
11 as follows:

12 (1) Unless additional duties are agreed to in writing signed by a  
13 buyer's agent, the duties of a buyer's agent are limited to those set  
14 forth in RCW 18.86.030 and the following, which may not be waived  
15 except as expressly set forth in (e) of this subsection:

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

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

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

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

24 (e) Unless otherwise agreed to in writing after the buyer's agent  
25 has complied with RCW 18.86.030(1)(f), to make a good faith and  
26 continuous effort to find a property for the buyer; except that a  
27 buyer's agent is not obligated to: (i) Seek additional properties to  
28 purchase while the buyer is a party to an existing contract to  
29 purchase; or (ii) show properties as to which there is no written  
30 agreement to pay compensation to the buyer's agent.

31 (2) ~~((A buyer's agent may show properties in which the buyer is~~  
32 ~~interested to other prospective buyers without breaching any duty to~~  
33 ~~the buyer))~~ (a) The showing of property in which a buyer is interested  
34 to other prospective buyers by a buyer's agent does not in and of  
35 itself breach the duty of loyalty to the buyer or create a conflict of  
36 interest.

37 (b) The representation of more than one buyer by different  
38 licensees affiliated with the same broker in competing transactions

1 involving the same property does not in and of itself breach the duty  
2 of loyalty to the buyers or create a conflict of interest.

3 **Sec. 4.** RCW 18.86.060 and 1996 c 179 s 6 are each amended to read  
4 as follows:

5 (1) Notwithstanding any other provision of this chapter, a licensee  
6 may act as a dual agent only with the written consent of both parties  
7 to the transaction after the dual agent has complied with RCW  
8 18.86.030(1)(f), which consent must include a statement of the terms of  
9 compensation.

10 (2) Unless additional duties are agreed to in writing signed by a  
11 dual agent, the duties of a dual agent are limited to those set forth  
12 in RCW 18.86.030 and the following, which may not be waived except as  
13 expressly set forth in (e) and (f) of this subsection:

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

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

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

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

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

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

34 (3) ~~((A dual agent may show alternative properties not owned by the~~  
35 ~~seller to prospective buyers and may list competing properties for sale~~  
36 ~~without breaching any duty to the seller))~~ (a) The showing of  
37 properties not owned by the seller to prospective buyers or the listing  
38 of competing properties for sale by a dual agent does not in and of

1 itself constitute action that is adverse or detrimental to the seller  
2 or create a conflict of interest.

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

8 ~~(4) ((A dual agent may show properties in which the buyer is~~  
9 ~~interested to other prospective buyers without breaching any duty to~~  
10 ~~the buyer))~~ (a) The showing of property in which a buyer is interested  
11 to other prospective buyers or the presentation of additional offers to  
12 purchase property while the property is subject to a transaction by a  
13 dual agent does not in and of itself constitute action that is adverse  
14 or detrimental to the buyer or create a conflict of interest.

15 (b) The representation of more than one buyer by different  
16 licensees affiliated with the same broker in competing transactions  
17 involving the same property does not in and of itself constitute action  
18 that is adverse or detrimental to the buyers or create a conflict of  
19 interest.

20 **Sec. 5.** RCW 18.86.070 and 1996 c 179 s 7 are each amended to read  
21 as follows:

22 (1) The agency relationships set forth in this chapter commence at  
23 the time that the licensee undertakes to provide real estate brokerage  
24 services to a principal and continue until the earliest of the  
25 following:

26 (a) Completion of performance by the licensee;

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

28 (c) Termination of the relationship by mutual agreement of the  
29 parties; or

30 (d) Termination of the relationship by notice from either party to  
31 the other. However, such a termination does not affect the contractual  
32 rights of either party.

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

36 (a) Accounting for all moneys and property received during the  
37 relationship; and

38 (b) Not disclosing confidential information.

1       **Sec. 6.** RCW 18.86.080 and 1996 c 179 s 8 are each amended to read  
2 as follows:

3       (1) In any real estate transaction, the broker's compensation may  
4 be paid by the seller, the buyer, a third party, or by sharing the  
5 compensation between brokers.

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

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

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

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

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

19       (7) Nothing contained in this chapter (~~obligates a buyer or seller~~  
20 ~~to pay compensation to a licensee, unless the buyer or seller has~~  
21 ~~entered into a written agreement with the licensee specifying the terms~~  
22 ~~of such compensation~~)) negates the requirement that an agreement  
23 authorizing or employing a licensee to sell or purchase real estate for  
24 compensation or a commission be in writing and signed by the seller or  
25 buyer.

26       **Sec. 7.** RCW 18.86.120 and 1996 c 179 s 13 are each amended to read  
27 as follows:

28       The pamphlet required under RCW 18.86.030(1)(f) shall consist of  
29 the entire text of RCW 18.86.010 through 18.86.030(~~(7)~~) and 18.86.040  
30 through 18.86.110(~~(7 and 18.86.900)~~) with a separate cover page. The  
31 pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in  
32 print no smaller than 10-point type, the cover page shall be in print  
33 no smaller than 12-point type, and the title of the cover page "The Law  
34 of Real Estate Agency" shall be in print no smaller than 18-point type.  
35 The cover page shall be in the following form:

1                   **The Law of Real Estate Agency**

2           This pamphlet describes your legal rights  
3   in dealing with a real estate broker or  
4   salesperson. Please read it carefully  
5   before signing any documents.

6           The following is only a brief summary of the attached law:

7           Sec. 1. Definitions. Defines the specific terms used in the  
8   law.

9           Sec. 2. Relationships between Licensees and the Public. States  
10   that a licensee who works with a buyer or tenant represents  
11   that buyer or tenant--unless the licensee is the listing agent,  
12   a seller's subagent, a dual agent, the seller personally or the  
13   parties agree otherwise. Also states that in a transaction  
14   involving two different licensees affiliated with the same  
15   broker, the broker is a dual agent and each licensee solely  
16   represents his or her client--unless the parties agree in  
17   writing that both licensees are dual agents.

18          Sec. 3. Duties of a Licensee Generally. Prescribes the duties  
19   that are owed by all licensees, regardless of who the licensee  
20   represents. Requires disclosure of the licensee's agency  
21   relationship in a specific transaction.

22          Sec. 4. Duties of a Seller's Agent. Prescribes the additional  
23   duties of a licensee representing the seller or landlord only.

24          Sec. 5. Duties of a Buyer's Agent. Prescribes the additional  
25   duties of a licensee representing the buyer or tenant only.

26          Sec. 6. Duties of a Dual Agent. Prescribes the additional  
27   duties of a licensee representing both parties in the same  
28   transaction, and requires the written consent of both parties  
29   to the licensee acting as a dual agent.

30          Sec. 7. Duration of Agency Relationship. Describes when an  
31   agency relationship begins and ends. Provides that the duties  
32   of accounting and confidentiality continue after the  
33   termination of an agency relationship.

34          Sec. 8. Compensation. Allows brokers to share compensation  
35   with cooperating brokers. States that payment of compensation  
36   does not necessarily establish an agency relationship. Allows  
37   brokers to receive compensation from more than one party in a  
38   transaction with the parties' consent.

1       Sec. 9. Vicarious Liability.       Eliminates the common law  
2       liability of a party for the conduct of the party's agent or  
3       subagent, unless the agent or subagent is insolvent.       Also  
4       limits the liability of a broker for the conduct of a subagent  
5       associated with a different broker.

6       Sec. 10. Imputed Knowledge and Notice.       Eliminates the common  
7       law rule that notice to or knowledge of an agent constitutes  
8       notice to or knowledge of the principal.

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

12      (~~Sec. 12. Effective Date. This law generally takes effect on~~  
13      ~~January 1, 1997.~~)

14      NEW SECTION.   **Sec. 8.**   Amendments set forth in sections 1 through  
15      6 of this act are not required to be included in the pamphlet on the  
16      law of real estate agency required under RCW 18.86.030(1)(f) and  
17      18.86.120 until January 1, 1998.

18      NEW SECTION.   **Sec. 9.**   Sections 1 through 6 and 8 of this act are  
19      necessary for the immediate preservation of the public peace, health,  
20      or safety, or support of the state government and its existing public  
21      institutions, and take effect immediately.

22      NEW SECTION.   **Sec. 10.**   Section 7 of this act takes effect January  
23      1, 1998.

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