



## OREGON INITIAL AGENCY DISCLOSURE PAMPHLET

*Consumers: This pamphlet describes the legal obligations of Oregon real estate licensees to consumers. Real estate brokers and principal real estate brokers are required to provide this information to you when they first contact you. A licensed real estate broker or principal broker need not provide the pamphlet to a party who has, or may be reasonably assumed to have, received a copy of the pamphlet from another broker.*

*This pamphlet is informational only. Neither the pamphlet nor its delivery to you may be interpreted as evidence of intent to create an agency relationship between you and a broker or a principal broker.*

### **Real Estate Agency Relationships**

An “agency” relationship is a voluntary legal relationship in which a licensed real estate broker or principal broker (the “agent”) agrees to act on behalf of a buyer or a seller (the “client”) in a real estate transaction. Oregon law provides for three types of agency relationships between real estate agents and their clients:

**Seller’s Agent** -- Represents the seller only.

**Buyer’s Agent** -- Represents the buyer only.

**Disclosed Limited Agent** -- Represents both the buyer and seller, or multiple buyers who want to purchase the same property. This can be done only with the written permission of all clients.

*The actual agency relationships between the seller, buyer and their agents in a real estate transaction must be acknowledged at the time an offer to purchase is made. Please read this pamphlet carefully before entering into an agency relationship with a real estate agent.*

### **Definition of “Confidential Information”**

Generally, licensees must maintain confidential information about their clients. “Confidential information” is information communicated to a real estate licensee or the licensee’s agent by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell. “Confidential information” does not mean information that:

- (1) The buyer instructs the licensee or the licensee’s agent to disclose about the buyer to the seller, or the seller instructs the licensee or the licensee’s agent to disclose about the seller to the buyer; and
- (2) The licensee or the licensee’s agent knows or should know failure to disclose would constitute fraudulent representation.

### **Duties and Responsibilities of a Seller's Agent**

Under a written listing agreement to sell property, an agent represents only the seller unless the seller agrees in writing to allow the agent to also represent the buyer.

An agent who represents only the seller owes the following affirmative duties to the seller, the other parties and the other parties' agents involved in a real estate transaction:

- (1) To deal honestly and in good faith;
- (2) To present all written offers, notices and other communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and
- (3) To disclose material facts known by the agent and not apparent or readily ascertainable to a party.

A seller's agent owes the seller the following affirmative duties:

- (1) To exercise reasonable care and diligence;
- (2) To account in a timely manner for money and property received from or on behalf of the seller;
- (3) To be loyal to the seller by not taking action that is adverse or detrimental to the seller's interest in a transaction;
- (4) To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;
- (5) To advise the seller to seek expert advice on matters related to the transaction that are beyond the agent's expertise;
- (6) To maintain confidential information from or about the seller except under subpoena or court order, even after termination of the agency relationship; and
- (7) Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer for the property, except that a seller's agent is not required to seek additional offers to purchase the property while the property is subject to a contract for sale.

None of these affirmative duties of an agent may be waived, except (7). The affirmative duty listed in (7) can only be waived by written agreement between seller and agent.

Under Oregon law, a seller's agent may show properties owned by another seller to a prospective buyer and may list competing properties for sale without breaching any affirmative duty to the seller.

Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise, including but not limited to investigation of the condition of property, the legal status of the title or the seller's past conformance with law.

### **Duties and Responsibilities of a Buyer's Agent**

An agent, other than the seller's agent, may agree to act as the buyer's agent only. The buyer's agent is not representing the seller, even if the buyer's agent is receiving compensation for services rendered, either in full or in part, from the seller or through the seller's agent.

An agent who represents only the buyer owes the following affirmative duties to the buyer, the other parties and the other parties' agents involved in a real estate transaction:

- (1) To deal honestly and in good faith;
- (2) To present all written offers, notices and other communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and
- (3) To disclose material facts known by the agent and not apparent or readily ascertainable to a party.

A buyer's agent owes the buyer the following affirmative duties:

- (1) To exercise reasonable care and diligence;
- (2) To account in a timely manner for money and property received from or on behalf of the buyer;
- (3) To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interest in a transaction;
- (4) To disclose in a timely manner to the buyer any conflict of interest, existing or contemplated;
- (5) To advise the buyer to seek expert advice on matters related to the transaction that are beyond the agent's expertise;
- (6) To maintain confidential information from or about the buyer except under subpoena or court order, even after termination of the agency relationship; and
- (7) Unless agreed otherwise in writing, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase.

None of these affirmative duties of an agent may be waived, except (7). The affirmative duty listed in (7) can only be waived by written agreement between buyer and agent.

Under Oregon law, a buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching an affirmative duty to the buyer.

Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise, including but not limited to investigation of the condition of property, the legal status of the title or the seller's past conformance with law.

### **Duties and Responsibilities of an Agent Who Represents More than One Client in a Transaction**

One agent may represent both the seller and the buyer in the same transaction, or multiple buyers who want to purchase the same property, only under a written “Disclosed Limited Agency Agreement” signed by the seller and buyer(s).

Disclosed Limited Agents have the following duties to their clients:

- (1) To the seller, the duties listed above for a seller’s agent;
- (2) To the buyer, the duties listed above for a buyer’s agent; and
- (3) To both buyer and seller, except with express written permission of the respective person, the duty not to disclose to the other person:
  - (a) That the seller will accept a price lower or terms less favorable than the listing price or terms;
  - (b) That the buyer will pay a price greater or terms more favorable than the offering price or terms; or
  - (c) Confidential information as defined above.

Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent’s expertise.

When different agents associated with the same principal broker (a real estate licensee who supervises other agents) establish agency relationships with different parties to the same transaction, only the principal broker will act as a Disclosed Limited Agent for both the buyer and seller. The other agents continue to represent only the party with whom the agents have already established an agency relationship unless all parties agree otherwise in writing. The principal real estate broker and the real estate licensees representing either seller or buyer shall owe the following duties to the seller and buyer:

- (1) To disclose a conflict of interest in writing to all parties;
- (2) To take no action that is adverse or detrimental to either party’s interest in the transaction; and
- (3) To obey the lawful instructions of both parties.

No matter whom they represent, an agent must disclose information the agent knows or should know that failure to disclose would constitute fraudulent misrepresentation.

*You are encouraged to discuss the above information with the licensee delivering this pamphlet to you. If you intend for that licensee, or any other Oregon real estate licensee, to represent you as a Seller’s Agent, Buyer’s Agent, or Disclosed Limited Agent, you should have a specific discussion with the agent about the nature and scope of the agency relationship. Whether you are a buyer or seller, you cannot make a licensee your agent without the licensee’s knowledge and consent, and an agent cannot make you a client without your knowledge and consent.*

# Agency Disclosure Brochure

## A Consumer Guide to Understanding Agency Relationships in Real Estate Transactions

Duties owed to Idaho consumers by a real estate brokerage and its licensees are defined in the "Idaho Real Estate Brokerage Representation Act." Idaho Code 54-2082 through 54-2097.



This informational brochure is published by the Idaho Real Estate Commission.



Effective July 1, 2019

**"Agency" is a term used in Idaho law that describes the relationships between a licensee and some parties to a real estate transaction.**

### Right Now You Are a Customer

Idaho law says a real estate brokerage and its licensees owe the following "Customer" duties to all consumers in real estate transactions:

- Perform necessary and customary acts to assist you in the purchase or sale of real estate;
- Perform these acts with honesty, good faith, reasonable skill and care;
- Properly account for money or property you place in the care and responsibility of the brokerage; and
- Disclose "adverse material facts" which the licensee knows or reasonably should have known. These are facts that would significantly affect the desirability or value of the property to a reasonable person, or facts establishing a reasonable belief that one of the parties cannot, or does not intend to, complete obligations under the contract.

**If you are a Customer, a real estate licensee is not required to promote your best interests or keep your bargaining information confidential. If you use the services of a licensee and brokerage without a written Representation (Agency) Agreement, you will remain a Customer throughout the transaction.**

A Compensation Agreement is a written contract that requires you to pay a fee for a specific service provided by a brokerage, and it is not the same as a Representation Agreement. If you sign a Compensation Agreement, you are still a Customer, but the brokerage and its licensees owe one additional duty:

- Be available to receive and present written offers and counter-offers to you or from you.

### You May Become a Client

If you want a licensee and brokerage to promote your best interests in a transaction, you can become a "Client" by signing a Buyer or Seller Representation (Agency) Agreement. A brokerage and its licensees will owe you the following Client duties, which are greater than the duties owed to a Customer:

- Perform the terms of the written agreement;
- Exercise reasonable skill and care;
- Promote your best interests in good faith, honesty, and fair dealing;
- Maintain the confidentiality of your information, including bargaining information, even after the representation has ended;
- Properly account for money or property you place in the care and responsibility of the brokerage;
- Find a property for you or a buyer for your property, and assist you in negotiating an acceptable price and other terms and conditions for the transaction;
- Disclose all "adverse material facts" which the licensee knows or reasonably should have known, as defined above; and
- Be available to receive and present written offers and counter-offers to you or from you.

**The above Customer or Client duties are required by law, and a licensee cannot agree with you to modify or eliminate any of them.**

If you have any questions about the information in this brochure, contact:  
Idaho Real Estate Commission  
(208) 334-3285  
[irec.idaho.gov](http://irec.idaho.gov)

## Agency Representation (Single Agency)

Under "Agency Representation" (sometimes referred to as "Single Agency"), you are a Client and the licensee is your

Agent who represents you, and only you, in your real estate transaction. The entire brokerage is obligated to promote your best interests. No licensee in the brokerage is allowed to represent the other party to the transaction.

**If you are a seller**, your Agent will seek a buyer to purchase your property at a price and under terms and conditions acceptable to you, and assist with your negotiations. If you request it in writing, your Agent will seek reasonable proof of a prospective purchaser's financial ability to complete your transaction.

**If you are a buyer**, your Agent will seek a property for you to purchase at an acceptable price and terms, and assist with your negotiations. Your Agent will also advise you to consult with appropriate professionals, such as inspectors, attorneys, and tax advisors. If disclosed to all parties in writing, a brokerage may also represent other buyers who wish to make offers on the same property you are interested in purchasing.

## Limited Dual Agency

"Limited Dual Agency" means the brokerage and its licensees represent both the buyer and the seller as Clients in the same transaction. The brokerage must have both the buyer's and seller's consent to represent both parties under Limited Dual Agency. You might choose Limited Dual Agency because you want to purchase a property listed by the same brokerage, or because the same brokerage knows of a buyer for your property. There are two kinds of Limited Dual Agency:

**Without Assigned Agents** The brokerage and its licensees are Agents for both Clients equally and cannot advocate on behalf of one client over the other. None of the licensees at the brokerage can disclose confidential client information about either Client. The brokerage must otherwise promote the non-conflicting interests of both Clients, perform the terms of the Buyer and Seller Representation Agreements with skill and care, and other duties required by law.

**With Assigned Agents** The Designated Broker may assign individual licensees within the brokerage ("Assigned Agents") to act solely on behalf of each Client. An assigned Agent has a duty to promote the Client's best interests, even if your interests conflict with the interests of the other Client, including negotiating a price. An Assigned Agent must maintain the Client's confidential information. The Designated Broker is always a Limited Dual Agent for both Clients and ensures the Assigned Agents fulfill their duties to their respective clients.

## What to Look For in Any Written Agreement with a Brokerage

A Buyer or Seller Representation Agreement or Compensation Agreement should answer these questions:

- When will this agreement expire?
- What happens to this agreement when a transaction is completed?
- Can I work with other brokerages during the time of my agreement?
- Can I cancel this agreement, and if so, how?
- How will the brokerage get paid?
- What happens if I buy or sell on my own?
- Under an Agency Representation Agreement am I willing to allow the brokerage to represent both the other party and me in a real estate transaction?

## Real Estate Licensees Are Not Inspectors

Unless you and a licensee agree in writing, a brokerage and its licensees are not required to conduct an independent inspection of a property or verify the accuracy or completeness of any statements or representations made regarding a property. To learn about the condition of a property, you should obtain the advice of an appropriate professional, such as a home inspector, engineer or surveyor.

## Audio/Video Surveillance

Use caution when discussing *anything* while viewing a property; audio or video surveillance equipment could be in use on listed properties.

**If you sign a Representation Agreement or Compensation Agreement with a licensee, the contract is actually between you and the licensee's brokerage. The Designated Broker is the only person authorized to modify or cancel a brokerage contract.**

**The licensee who gave you this brochure is licensed with:**

Name of Brokerage: \_\_\_\_\_ Phone: \_\_\_\_\_

## RECEIPT ACKNOWLEDGED

Rev 07/01/19

By signing below, you acknowledge only that a licensee gave you a copy of this Agency Disclosure Brochure.  
**This document is not a contract, and signing it does not obligate you to anything.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_





**2019 MONTANA CODE ANNOTATED**  
TITLE 37. PROFESSIONS AND OCCUPATIONS  
CHAPTER 51. REAL ESTATE BROKERS AND SALESPERSONS | PART 3. LICENSING

**37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.**

(1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms “buyer agent”, “dual agent”, and “seller agent”, as used in this chapter, are defined in 37-51-102 and are not related to the term “agent” as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller’s written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller’s property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller’s confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller’s objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent’s possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer’s written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer’s confidences;

(e) exercise reasonable care, skill, and diligence in

pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the ability of the buyer to perform on any purchase offer;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section

except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.



(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

- (a) to account for all money and property of the principal;
- (b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:
  - (i) subsequent conduct by the principal that authorizes disclosure;
  - (ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;
  - (iii) disclosure required by law or to prevent the commission of a crime;
  - (iv) the information being disclosed by someone other than the broker or salesperson; and
  - (v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

### **37-51-314. Relationship disclosure requirements.**

(1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

- (a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and

contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: “IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER”.

(c) a definition of “adverse material fact”;

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller’s or buyer’s written consent to the dual agency relationship.

(8) A broker or salesperson, while managing properties for owners, shall disclose to all customers

and clients the contractual relationship of the broker or salesperson.

(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

(10) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.



## **LEGAL BULLETIN**

### **Revisions to RCW 18.86**

Significant revisions to Washington’s law governing real estate brokerage relationships (RCW 18.86, the “Agency Law”) become effective on January 1, 2024. The revisions, which are set forth in [Senate Bill 5191](#), include:

- Requiring real estate firms to enter into a written brokerage services agreement with a buyer as soon as reasonably practical after commencing real estate brokerage services unless the appointed broker performs real estate brokerage services solely for commercial real estate;
- Changing the term “dual agent” to “limited dual agent” to reflect the limited representation that a broker can provide when representing both the buyer and the seller;
- Requiring specific consent by buyers and sellers to an individual broker acting as a limited dual agent;
- Clarifying that a broker owes certain duties in RCW 18.86.030 to all parties in a transaction;
- Requiring disclosure to all parties of any compensation offered to a firm by another party or another real estate firm; and
- Modernizing the “pamphlet” that brokers must provide to consumers explaining real estate brokerage relationships.

These changes in the law necessitated revisions to several CBA forms, as well as the creation of new forms. “The Law of Agency” pamphlet has been replaced by a new pamphlet, “Real Estate Brokerage in Washington.” Samples of the revised forms and pamphlet are available in the Washington State Agency Law Resources section of CBA’s website and will be published for use in Legal Library Pro on January 1, 2024.

The revisions to the Agency Law apply to both purchase and sale transactions and lease transactions. References in this bulletin to buyers and sellers generally apply to tenants and landlords.

### **Brief History of Agency Law**

The Agency Law was enacted in 1997. Prior to the Agency Law, brokers who worked with buyers were actually “sub-agents” of the seller and therefore owed agency duties to the seller and not the buyer they were working with. The Agency Law presumes that a broker who performs real estate brokerage services for a buyer is an agent of the buyer unless the broker has a written agreement with the seller.

Accordingly, although the Agency Law requires written agreements between real estate firms and sellers, it does not require written agreements with buyers.

Senate Bill 5191 (the “Revised Law”) was passed during the 2023 legislative session. It will take effect on January 1, 2024, and makes several significant changes to the Agency Law, including the requirement that unless a broker performs real estate brokerage services as a buyer’s agent solely for commercial real estate, the broker must enter a written services agreement with buyer. This bulletin describes the changes to the Agency Law and the associated changes to CBA’s library of legal forms.

### **Changes Affecting Numerous Forms**

CBA made certain general changes that impact many forms. First, the terms “Selling Firm,” “Selling Broker,” and “Selling Office Commission” have been replaced by “Buyer Brokerage Firm,” “Buyer Broker,” and “Buyer Brokerage Firm Compensation,” respectively. “Selling Firm” and related terms are remnants of sub-agency, which, as noted above, has not been a feature of the Agency Law since 1996.

Second, buyer brokerage firms’ compensation has been decoupled from the listing firms’ compensation. Previously, a buyer brokerage firm’s compensation was an offer from the listing firm to share its compensation from the seller with the buyer brokerage firm. Now, the listing agreements provide the seller with the option of offering compensation directly to the buyer brokerage firm. Additionally, the new Buyer Brokerage Services Agreement and Tenant Brokerage Services Agreement specify the compensation to be paid to the buyer brokerage firm or tenant brokerage firm by the buyer or tenant. Both of those forms acknowledge that the seller or landlord may (but is not required to) offer compensation to the buyer brokerage firm or tenant brokerage firm. As described below, those forms address what happens if the compensation offered by the seller or landlord differs from the compensation to be paid by the buyer or tenant pursuant to a brokerage services agreement.

Because buyer brokers’ compensation is independent of the listing broker’s compensation, the amount of compensation (if any) to be paid by the seller is a term to be agreed upon by the buyer and seller. Accordingly, the Purchase and Sale Agreement now contains a Specific Term identifying the Buyer Brokerage Firm compensation. Similarly, the lease forms contain new provisions in which the parties specify the compensation (if any) paid to the Tenant’s Brokerage Firm.

The changes described above impacted several forms, not all of which are specifically discussed in this bulletin.

### **Brokerage Services Agreements**

The Revised Law requires brokers to enter a written “brokerage services agreement” with buyers as well as sellers. There is an exception to this requirement for brokers who represent buyers solely in connection with commercial real estate (the

“Commercial Real Estate Exception”). The Commercial Real Estate Exception is described in detail below. Unless that exception applies, a firm must have a services agreement with its client to receive compensation.

The revised Agency Law requires a firm to enter into a services agreement with the firm’s principal “before, or as soon as reasonably practical after, its appointed broker commences rendering real estate brokerage services to, or on behalf of, the principal.” This means that the broker must enter into the services agreement with the principal as soon as the broker reasonably can, taking into account the circumstances of the individual situation. The failure to do so is a violation of license law.

The revised Agency Law requires services agreements to include the following provisions:

- The term of the agreement. For buyers, agreements must have a default term of 60 days.
- The identity of the broker appointed as the agent for the principal.
- Whether the agency relationship is exclusive or non-exclusive. For buyers, agreements must include checkbox options for the type of agency relationship.
- Whether the principal consents to the individual broker acting as a limited dual agent, which consent must be separately initialed by the principal.
- Whether the principal consents to the designated broker and any supervising broker acting as a limited dual agent.

Services agreements must also contain the terms of compensation, including:

- The amount the principal agrees to compensate the firm.
- The principal’s consent, if any, and terms of such consent, to compensation sharing between firms and parties.
- The principal’s consent, if any, and any terms of such consent, to compensation of the firm by more than one party.

Services agreements with buyers must also state whether the appointed broker agrees to show the buyer properties if there is no agreement or offer by any party or firm to pay compensation to the firm for the services provided to the buyer.

### **Commercial Real Estate**

The Revised Law provides that in lieu of a services agreement, a broker rendering real estate brokerage services to a buyer solely for commercial real estate may disclose in writing to the buyer, before the buyer signs an offer with regard to such commercial real estate, the source and amounts of any compensation that the broker has or expects to receive from any party in conjunction with such transaction.

“Commercial real estate” is defined by RCW 60.42.005 to include all real property except: (1) property improved by four or less residential units; (2) unimproved property that may be improved only by four or less residential units; (3) certain farm and



agricultural land and timberland; and (4) improved residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be sold on a unit-by-unit basis.

CBA has created several new forms to assist brokers in navigating this Commercial Real Estate Exception. As noted above, the applicability of the exception stems from the nature of the real estate acquired by the buyer. No other factor determines whether the exception applies. If the Commercial Real Estate Exception does not apply, a firm must enter a services agreement with its principal before or as soon as reasonably practical after commencing real estate brokerage services. The Notice Regarding Brokerage Services Agreements (Form NRBSA) is a form brokers can provide to clients interested in acquiring commercial real estate. It states that entering a services agreement is optional unless the client decides at a later time to consider acquiring real estate other than commercial real estate, in which case a services agreement will be required.

If a firm has not entered into a services agreement with a buyer of commercial real estate, the buyer broker must disclose in writing to the buyer, before the buyer signs an offer with regard to such commercial real estate, the source and amounts of any compensation that the broker has or expects to receive from any party in conjunction with such transaction. The new Disclosure and Consent (Form DC) can be used to make this disclosure. This form also contains other disclosures and consents required by Washington law, including agency disclosures, consents regarding compensation, and acknowledgment of receipt of the pamphlet, so it can be used in transactions in which the transaction documents do not otherwise contain those required provisions. The new Disclosure and Consent – Leasing form (Form DC-L) is the version of this form that should be used for leasing transactions.

### **Limited Dual Agency**

The Revised Law replaces the term “dual agency” with “limited dual agency” to reflect the reality that a broker representing both the buyer and the seller is limited in the services it can provide to either principal. Like the law prior to the revision, to be a limited dual agent, a broker must have a written consent from both the buyer and the seller. The Revised Law also requires the principal to “separately initial” in the services agreement the principal’s consent to an individual broker acting as a limited dual agent. Additionally, the Revised Law requires a principal to acknowledge that “a limited dual agent may not advocate terms favorable to one principal to the detriment of the other principal and is further limited as set forth in RCW 18.86.060.” CBA’s new Buyer Brokerage Services Agreement, new Tenant Brokerage Services Agreement, and revised listing agreements address these requirements.

The agency relationship with a principal includes the firm’s designated broker and any managing broker responsible for supervising the broker appointed by the firm to be the principal’s agent. As such, in addition to the above requirements related to single agent limited dual agency, the Revised Law provides that “in a transaction in

which different brokers affiliated with the same firm represent different parties, the firm's designated broker, and any managing broker responsible for the supervision of both brokers, is a limited dual agent." The Revised Law requires the principal to consent to the firm's limited dual agency, but unlike single agent limited dual agency, the principal need not separately initial the consent. CBA's new Buyer Brokerage Services Agreement, new Tenant Brokerage Services Agreement, and revised listing agreements address these requirements.

### **Duties Owed to All Parties**

Brokers owe certain duties to all parties in a transaction, including the duties to exercise reasonable skill and care, deal honestly and in good faith, timely present all written offers, disclose all material facts, and account for money received by the broker. (RCW 18.86.030) The Revised Law clarifies that these duties are owed to all parties in the transaction and not just the broker's own client.

Brokers also owe a duty to all parties to disclose who the broker represents. CBA's Commercial & Investment Purchase & Sale Agreement (Form PS\_1A) enables brokers to satisfy this duty in the "agency disclosure" provision where brokers identify using check boxes who they represent in a transaction. As described below, the changes to CBA's leasing forms include revisions that enable compliance with this requirement in leasing transactions.

The Revised Law also requires brokers to disclose to all parties "any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party." (RCW 18.86.030(g)(ii)) The revisions noted above to the purchase & sale agreement and lease agreements stemming from the decoupling of listing broker and buyer broker compensation facilitate compliance with this requirement. Additionally, Forms DC and DC-L described above can be used by brokers (a) to disclose any compensation offered by a firm to a firm representing the other party and (b) in transactions in which the parties do not use a CBA purchase & sale agreement or lease form.

### **Real Estate Brokerage in Washington Pamphlet**

The original "Law of Agency" pamphlet was simply a reprinting of the text of RCW 18.86. The Revised Law creates a new pamphlet, "Real Estate Brokerage in Washington," which describes real estate brokerage relationships and legal duties in a way that is more concise and easier for consumers to understand.

Under the Revised Law, brokers must provide the pamphlet to any party to whom the broker renders real estate brokerage services "as soon as reasonably practical but before the party signs a services agreement." Additionally, brokers must "obtain an acknowledgement of receipt by the party." Brokers who represent buyers solely interested in commercial real estate should proceed carefully because although a

written services agreement is not required for such buyers, the buyer must still be provided the pamphlet and the broker must still obtain an acknowledgement of receipt. CBA created the new Pamphlet Acknowledgment (Form PA), which brokers can use to document a party's receipt of the pamphlet.

Additionally, brokers must provide the pamphlet to any party who is not represented by a broker before the party signs an offer or as soon as reasonably practical. Brokers must obtain a receipt acknowledgment from those parties as well.

### **Buyer Brokerage Services Agreement**

The Buyer Brokerage Services Agreement (Form BBSA) replaces both the prior Buyer's Agency Agreement (Form BB-1) and the prior Exclusive Buyer/Tenant Representation and Commission Agreement (Form XBT). Provisions in the Buyer Brokerage Services Agreement related to the Revised Law are:

- The default duration of the term of the agreement is 60 days, as required by the Revised Law. The parties may agree on a different duration of the term.
- There is a provision regarding "limited dual agency," containing initial blocks for a buyer to consent to the individual broker acting as a limited dual agent.
- The provision regarding "scope of agency" enables the parties to choose between an exclusive agency relationship and a non-exclusive agency relationship, with a default of non-exclusive agency.
- A provision regarding "property showings" addresses whether the broker will show properties to the buyer for which there is no offer from the seller to compensate the buyer broker and the buyer has not agreed to compensate the broker.

The compensation provision of the Buyer Brokerage Services Agreement has been substantially revised in light of the decoupling of buyer brokerage firm and listing firm compensation. In Section 5(a), the buyer and the buyer brokerage firm agree to the compensation that the buyer will pay upon the closing of the buyer's purchase of a property.

Section 5(b) provides that the seller may, but is not required to, offer to compensate a buyer broker. It then accounts for different circumstances that may arise depending on the amount of compensation (if any) offered by the seller:

- If the compensation paid by the seller is less than the compensation owed by the buyer, the buyer will pay the difference.
- If the compensation paid by the seller is equal to or greater than the compensation owed by the buyer, no compensation is due from the buyer. If the amount of compensation paid by the seller is greater than the compensation owed by the buyer, the parties can agree that the excess will be paid to the buyer brokerage firm or will be credited to the seller. The parties may also agree on a different arrangement.

Section 6 addresses the buyer's compensation obligation for exclusive and non-exclusive agency relationships. For exclusive agency relationships, the buyer must pay the compensation if the buyer or its affiliate purchases a property within the scope of the agreement during the term of the agreement. For non-exclusive agency relationships, the buyer must pay the compensation if the buyer or its affiliate purchases a property during the term of the agreement that buyer learned about through the efforts of the buyer brokerage firm. For both exclusive and non-exclusive agreements, the buyer owes the compensation if it purchases a property during the "tail period." The default duration of the tail period is 60 days, but the parties can agree to a longer or shorter duration.

### **Tenant Brokerage Services Agreement**

The Tenant Brokerage Services Agreement (Form TBSA) is similar to the Buyer Brokerage Services Agreement. Form TBSA replaces Form XBT. Although not dictated by the revision to the Agency Law, the form provides a variety of compensation options that are unique to leasing transactions. For this reason, there are separate brokerage services agreements for buyers and tenants.

### **Listing Agreements**

The listing agreements for both sale and lease listings (Form XS, Form XL, Form XSL, Form XA, Form XLA, Form XB, and Form XBA) have been revised, including the following:

- Addition of a new provision regarding "limited dual agency," including an initial block for the seller's consent for the listing broker to act as a limited dual agent.
- Consistent with compensation decoupling, listing firm's compensation is delineated separately from compensation offered (if any) by seller to the buyer's broker. For the lease listing agreements, multiple formulas for calculating compensation are presented as choices. The seller is informed that offering compensation to the buyer's broker is not required.
- Seller consents to firm receiving compensation from more than one party and to sharing compensation between firms.
- Like the Tenant Brokerage Services Agreement, the lease listing agreements contain additional options for calculating compensation.

### **Purchase and Sale Agreements and Lease Agreements**

As noted above, the purchase and sale agreements and lease agreements have been revised to reflect that buyer brokers' compensation is a term to be agreed upon between the buyer and seller. Additionally, the purchase and sale agreements and lease agreements now contain buyers broker compensation disclosures that must be provided to buyers of commercial real estate in lieu of a services agreement. Finally, the

consents to dual agency have been removed from the purchase and sale agreements and lease agreements because those consents are required in the services agreements.

The agency disclosure provisions in the lease agreements have been revised to enable compliance with the requirement that brokers disclose to all parties who the broker represents. Additionally, the provisions in the lease agreements concerning the landlord compensation have been revised to reflect the different options for calculating compensation contained in the listing agreements and Tenant Brokerage Services Agreement.

### **Compensation Disbursement Instructions**

Because some or all of the buyer broker's compensation may now be paid by the buyer pursuant to a buyer brokerage services agreement, CBA has created a new form to instruct escrow to make payments to the buyer broker from the buyer. Specifically, a buyer brokerage firm should use the "Compensation Disbursement Form (Buyer Funded)" (Form CDF-B) to direct such payments. Form CDF-B need not be signed by or shared with the seller or listing firm. Existing Form CDF, which provides disbursement instructions for seller-funded compensation, was revised to replace "commission" with "compensation" and replace "Selling Office" and "Selling Firm" with "Buyer Brokerage Firm."

### **Existing Agency Relationships and Pending Transactions**

Listing agreements signed prior to January 1, 2024, should be amended to address the seller's consent to limited dual agency. Firms should use the Amendment to Listing Agreement (Form LE) to do this. The seller should check the applicable box to address consent to limited dual agency for the individual listing broker. Any listing signed on or after January 1, 2024, should use the new listing agreement.

Purchase and sale agreements for transactions pending before January 1, 2024, need not be amended. Purchase and sale agreements written on or after January 1, 2024, should use the new form.

For buyer brokers who have existing agency relationships, brokers should have buyers sign the new services agreement unless the Commercial Real Estate Exception applies and the parties elected not to enter a services agreement. If a broker and a buyer have an existing written agency agreement, the parties should update their agreement on January 1, 2024, using a new form that complies with the Revised Law.

Buyers who are party to an existing purchase and sale agreement that has not yet closed on January 1, 2024, need not sign a services agreement. If such a sale fails, however, and if the Commercial Real Estate Exception does not apply, the parties must enter a services agreement.