# CURRENT ISSUES IN WASHINGTON RESIDENTIAL CORE 2024-2025
# CHAPTER 1: FORMS UPDATES

## Course Overview

**We encourage our customers to visit the FAQs section for further information regarding their educational experience. There you will find complete step-by-step tutorials that we've designed with YOU in mind!**

McKissock students should visit the McKissock FAQs.

Colibri Real Estate students should visit the Colibri Real Estate FAQs.

**Please note:** Upon completion of the final exam, you will need to advance to the survey page and complete the survey. Once that is done, the course will be marked as "Complete" in our system and credit may be issued.

**Course Description**

Welcome to the Core Curriculum course for the years 2024 and 2025.

While completing your continuing education requirements may not feel like the most exciting part of your job, it's nevertheless an important part of a successful real estate practice. Even the most seasoned agents need to keep informed of new laws and regulations and remain up to date on trends in business practices. Staying abreast of these changes helps you to maximize your business productivity and to avoid inadvertently violating the law.

In this course, in Chapter 1, we'll discuss a number of new and revised Northwest Multiple Listing Service (NWMLS) forms. In Chapter 2, we'll cover recent revisions to the real estate agency law; then, we'll review a number of new laws recently passed by the Washington state legislature and explain their effects on day-to-day real estate practices.

Finally, in Chapter 3, we'll cover various issues concerning business practices and professional standards, including cooperation with fellow licensees, multiple offer scenarios, the use of transaction coordinators, and some common license law violations.

**Course Learning Objectives**

After completing this course, you should be able to:

- Describe how to use various new or revised NWMLS forms.
- Summarize recent changes in the real estate agency law.
- Discuss recent state legislation impacting day-to-day real estate practices.
- Explain how to raise the bar of professionalism in interactions.
- Identify best practices in an active market.
- List common license law violations by brokers.

## Chapter Introduction

We'll begin this course by discussing a number of real estate forms used in many residential transactions in Washington. Some of these forms have been recently revised or are brand new; others simply aren't well understood by licensees.

## Chapter Overview

After completing this chapter, you should be able to:

- Describe how to use various new or revised NWMLS forms.

## Evidence of Funds

Let's begin our discussion of forms updates with the Evidence of Funds Addendum (NWMLS Form 22EF). This form is often used by a buyer who is offering cash for the purchase price rather than relying on the proceeds from a loan. The form gives assurance to the seller that, yes, the buyer has the cash or has a ready way to obtain it.

The Evidence of Funds Addendum is particularly useful for buyers who are relying on "contingent funds," that is, cash that the buyer doesn't have on hand yet (such as gift funds from a relative or the proceeds from selling stock).

2. ❑ **EVIDENCE OF NON-CONTINGENT FUNDS.** Buyer is relying on Non-Contingent Funds for payment of the Purchase Price. Buyer shall provide Evidence to Seller of such funds within _____days (3 days if not filled in) of mutual acceptance. Unless Buyer discloses other sources of funds for the payment of the Purchase Price, Buyer represents that the Non-Contingent Funds are sufficient to pay the Purchase Price. Buyer shall not use such Non-Contingent Funds for any purpose other than the purchase of the Property without Seller's prior written consent. If Buyer fails to timely provide such Evidence, Seller may give notice terminating this Agreement any time before such Evidence is provided. Upon Seller's notice of termination under this Addendum, the Earnest Money shall be refunded to Buyer.

Some buyers use the form for non-contingent funds as Paragraph 2 suggests. In this situation, the buyer has the cash on hand and simply wants to assure the seller that they will provide evidence of it.

A buyer using non-contingent funds should fill in the number of days after acceptance of the offer by which point the buyer will give the seller evidence of having the funds. The default period is three days. Evidence would take the form of a document from the financial institution where the funds are kept. If the buyer does not provide evidence of the funds within that timeframe, the seller may terminate the agreement; at that point, the seller would return the earnest money to the buyer.

As we said earlier, though, the Evidence of Funds Addendum is mostly used by buyers relying on contingent funds. Paragraph 3 of Form 22EF allows such a buyer to disclose the source of the contingent funds. Common sources include a loan that hasn't yet been approved, a gift yet to be received, a property sale that hasn't closed, or other funds that aren't currently liquid, like stocks that need to be sold or foreign currency that must be converted.

3. ❑ **DISCLOSURE OF CONTINGENT FUNDS.** Buyer is relying on Contingent Funds for the Purchase Price:
   - ❑ Loan:_____
   - ❑ Sale of the following owned by Buyer: _____
   - ❑ Gift of $ _____ from _____
   - ❑ Funds not readily convertible to liquid US funds: _____
   - ❑ Down Payment Program: _____
   - ❑ Other (describe): _____

A buyer using contingent funds should fill in the number of days before closing by which they must give evidence to the seller that they have received the funds. The default deadline is ten days prior to closing.

As is the case with non-contingent funds, if the buyer does not provide evidence of having the funds by that deadline, the seller may terminate the agreement and refund the earnest money.

4. **BUYER DEFAULT.** If Buyer fails to timely close because the Contingent Funds identified in Section 3 are not available by Closing, Buyer shall be in default and Seller shall be entitled to remedies as provided for in the Agreement.

If the buyer can't close the sale because the promised funds won't be available by closing, then the buyer has defaulted, and the seller may choose from whatever remedies are available under the purchase and sale agreement.

## Inspection Forms

The Inspection Addendum (NWMLS Form 35) makes the underlying purchase and sale agreement contingent on the buyer's satisfaction with an inspection of the property. This form can be a frequent source of terminated transactions when an inspection reveals a defect that a buyer doesn't like and the parties can't agree on how to resolve the problem.

The form states explicitly that the buyer's satisfaction is purely subjective. There's no minimum threshold for dissatisfaction, and the buyer does not have to explain their reasoning. If they are unhappy with the inspection results, the buyer can simply exercise their right to terminate the agreement.

1. **INSPECTION CONTINGENCY.** This Agreement is conditioned on Buyer's subjective satisfaction with inspections of the Property and the improvements on the Property. Buyer's inspections may include, at Buyer's option and without limitation, the structural, mechanical and general condition of the improvements to the Property, compliance with building and zoning codes, an inspection of the Property for hazardous materials, a pest inspection, and a soils/stability inspection. Buyer's general home inspection must be performed by Buyer or a person licensed under RCW 18.280. Buyer may engage specialists (e.g. plumbers, electricians, roofers, etc.) to conduct further inspections of the Property.

While general inspections must be performed by a licensed inspector under the last sentence, tradespeople can perform specialized inspections. The buyer may also perform the inspection personally.

The scope of the inspection is up to the buyer: it may involve merely an inspection of the general and structural condition of the property, or it may also include an inspection for hazardous materials, a pest inspection, an inspection of the soil and its stability, and/or an inspection of the sewer line.

The buyer is responsible for choosing the inspector, ordering the inspection, and paying for the inspection.

The buyer cannot make modifications to the property without the seller's permission and is responsible for any damage related to the inspection.

If the buyer or the inspector needs to move or remove any items to perform the inspection, the property must be restored to its pre-inspection condition. For example, if a buyer orders a sewer line video inspection, this may require temporary removal of a toilet or other fixture to access the sewer line.

## Buyer's Notice

3. **BUYER'S NOTICE.** This inspection contingency shall conclusively be deemed waived and Seller shall not be obligated to make any repairs or modifications unless within _____ days (10 days if not filled in) after mutual acceptance of this Agreement (the "Initial Inspection Period"), Buyer gives notice (a) approving the inspection and waiving this contingency; (b) disapproving the inspection and terminating the Agreement; (c) that Buyer will conduct additional inspections; or (d) proposing repairs to the property or modifications to the Agreement. If Buyer disapproves the inspection and terminates the Agreement, the Earnest Money shall be refunded to Buyer. If Buyer proposes repairs to the property or modifications to the Agreement, including adjustments to the purchase price or credits for repairs to be performed after Closing, the parties shall negotiate as set forth in Paragraph 6, below. The parties may use NWMLS Form 35R to give notices required by this Addendum.

The inspection contingency is considered waived unless the buyer gives notice of their dissatisfaction within the required time period. (If no number is filled in, the default period is ten days from the date of the purchase and sale agreement.)

When giving notice, the buyer can disapprove the inspection and get their earnest money back, or they can waive the inspection and proceed with the transaction. Alternatively, they can notify the seller that they need to perform additional inspections. And, finally, the buyer can propose repairs to the property or other modifications to the agreement. Further negotiations should be made using Form 35R, which we'll discuss shortly.

The form warns the buyer that if they don't give notice within the agreed-upon timeframe, the contingency is automatically waived, and the transaction continues without the seller being obligated to make any further modifications. This is a significant penalty, so buyers and their agents must be careful.

## Inspection Report

According to Paragraph 4a of the Inspection Addendum, the buyer shall NOT give a copy of the inspection report to the seller unless the seller makes a request in writing. This may seem odd at first glance. It may seem that more information is better and would help the buyer and seller more effectively communicate as they negotiate over possible repairs or changes to the agreement, such as a price reduction.

4. **INSPECTION REPORT.** Buyer shall not provide the inspection report, or portions of the report, to Seller, unless Seller requests otherwise in writing. Upon Seller's written request, Buyer shall provide to Seller the inspection report, portions of the report, or the inspector's recommendation for additional inspections, as requested by Seller.
   a. **Waiver of Contingency by Buyer.** If Buyer provides any portion of the inspection report to Seller without Seller's prior written request or consent, the inspection contingency shall conclusively be deemed waived.
   b. **Seller Request.** The selection of any checkbox below by Seller shall not be considered a counteroffer.
      - ☐ Seller requests that Buyer provide the inspection report to Seller.
      - ☐ If Buyer requests repairs or modifications to the Agreement, Seller requests that Buyer provide only the portions of the inspection report related to the requested repairs or modifications to Seller.
      - ☐ If Buyer provides notice of additional inspections pursuant to Paragraph 5, Seller requests that Buyer provide a copy of the inspector's recommendation for additional inspections to Seller.



The rationale, however, is that this prohibition serves to protect the buyer's interests. The buyer and the buyer's broker are most likely not experts on structural problems in buildings or on repairs.

The buyer's brokers, in other words, are not adequately qualified to draft language during the negotiation process concerning necessary repairs, at least not at the level of detail that would be warranted.

That still leads to this question: How does a buyer's broker make a request for repairs if they can't attach the inspection report and point to problems that it highlights? The answer is the buyer and buyer's broker should get a contractor to come in, assess the problem, and make a bid. That bid should be attached to the Inspection Addendum during the negotiation process.

This allows the seller to see specific repairs proposed by a professional rather than just an inspector's general diagnosis of the problem. By depending on an actual bid rather than an inspector's cost estimate (if any), the parties can negotiate based on a realistic price.

Naturally, the sellers may be skeptical of the buyer's proposed bid. The seller's solution, if they still want to continue pursuing the transaction, would be to get a contractor's bid of their own. If the seller has a competing bid, that could be the basis for negotiations, especially if the seller's bid is for a lower cost or suggests that fewer repairs are needed.

## Additional Inspections

One possible drawback of this approach is the difficulty of obtaining contractors' bids in the buyer's standard 10-day period for giving notice following the inspection. It's hard to get a contractor to come out in that short a period, let alone prepare a detailed bid. That's where the "Additional Inspections" clause in the Inspection Addendum comes in: it grants further time for inspections.

The additional inspections provision lets the buyer and seller go beyond the default 10-day period for notice and be more thorough. The parties fill in how many days after giving notice the buyer has to obtain additional inspections. (The default is five days if not filled in.)

5. **ADDITIONAL TIME FOR INSPECTIONS.** If an inspector so recommends, Buyer shall have additional time to obtain further evaluation of any item by a specialist at Buyer's option and expense if, on or before the end of the Initial Inspection Period, Buyer provides notice that Buyer will seek additional inspections and, upon Seller's request, a copy of the inspector's recommendation. If Buyer provides timely notice of additional inspections (and, if requested by Seller, a copy of the inspector's recommendation), Buyer shall have _____ (5 days if not

Buyer's Initials Date Buyer's Initials Date Seller's Initials Date Seller's Initials Date

filled in) after giving the notice to obtain the additional inspection(s) as recommended by the inspector and the Initial Inspection Period shall be so extended.

Following the provision for additional inspections, the Inspection Addendum form describes the timeframe for further negotiations. (These negotiations will take the form of the Seller's Response to Request for Repairs or Modifications and the Buyer's Reply, both on Form 35R.) On Form 35, however, the parties need to agree how long the buyer and seller have to take each of these steps.

6. **BUYER'S REQUESTS FOR REPAIRS OR MODIFICATIONS**. If Buyer requests repairs or modifications pursuant to Paragraph 3, the parties shall negotiate as set forth in this Paragraph 6. Buyer's initial request and Seller's response made in accordance with the following procedures are irrevocable for the time period provided.

   a. **Seller's Response to Request for Repairs or Modifications.** Seller shall have _____ days (3 days if not filled in) after receipt of Buyer's request for repairs or modifications to give notice that Seller (i) agrees to the repairs or modifications proposed by Buyer; (ii) agrees to some of the repairs or modifications proposed by Buyer; (iii) rejects all repairs or modifications proposed by Buyer; or (iv) offers different or additional repairs or modifications. If Seller agrees to the terms of Buyer's request for repairs or modifications, this contingency shall be satisfied and Buyer's Reply shall not be necessary. If Seller does not agree to all of Buyer's repairs or modifications, Buyer shall have an opportunity to reply, as follows:

   b. **Buyer's Reply.** If Seller does not agree to all of the repairs or modifications proposed by Buyer, Buyer shall have _____ days (3 days if not filled in) from either the day Buyer receives Seller's response or, if Seller fails to timely respond, the day Seller's response period ends, whichever is earlier, to (i) accept the Seller's response at which time this contingency shall be satisfied; (ii) agree with the Seller on other remedies; or (iii) disapprove the inspection and terminate the Agreement, in which event, the Earnest Money shall be refunded to Buyer.

   **ATTENTION BUYER:** These time periods for negotiating repairs or modifications shall not repeat. The parties must either reach a written agreement or Buyer must terminate this Agreement by the Buyer's Reply deadline set forth in Paragraph 6(b). Buyer's inaction during Buyer's reply period shall result in waiver of this inspection condition, in which case Seller shall not be obligated to make any repairs or modifications whatsoever and this contingency shall be deemed waived.

The parties have the option of filling in a different number of days, but if no number is filled in the Seller's Response, then the inspection must occur within three days of receiving the Buyer's Request for Repairs or Modifications. Similarly, the Buyer's Reply must occur within three days of receiving the Seller's Response.

These steps can't endlessly repeat; in other words, only one Seller's Response and one Buyer's Reply exist. By the agreed-upon Buyer's Reply deadline, the parties either need to hammer out a written agreement on repairs or modifications, or else the buyer must terminate the underlying purchase and sale agreement.

If the buyer doesn't terminate before the Buyer's Reply deadline and there's no satisfactory agreement, then the contingency is considered to be waived, and the buyer is out of luck in terms of having any leverage to further request repairs.

These are very tight deadlines, so the parties need to be careful about meeting them. If any problems or delays are anticipated, it makes sense to fill in considerably longer periods than the three-day default periods (or the previously mentioned five-day period for additional inspections).

If the parties agree to make repairs, the repairs themselves are also subject to deadlines. The parties can choose how many days before closing the repairs will need to be completed. If no number of days is filled in, the default position is they must be completed three days before closing.

7. **REPAIRS.** If Seller agrees to make the repairs proposed by Buyer, then repairs shall be accomplished at Seller's expense in a commercially reasonable manner and in accordance with all applicable laws no fewer than _____ days (3 days if not filled in) prior to the Closing Date. In the case of hazardous materials, "repair" means removal or treatment (including but not limited to removal or, at Seller's option, decommissioning of any oil storage tanks) of the hazardous material at Seller's expense as recommended by and under the direction of a professional selected by Seller. Seller's repairs are subject to re-inspection and approval, prior to Closing, by the inspector or specialist who recommended the repair, if Buyer elects to order and pay for such re-inspection. If Buyer agrees to pay for any repairs prior to Closing, the parties are advised to seek the counsel of an attorney to review the terms of that agreement.

The seller's repairs may be re-inspected before closing by the same inspector who initially recommended the repair.

Ordinarily, the seller is responsible for the costs of the repair. However, the buyer may pay for repairs before closing though the Inspection Addendum form recommends the buyer seek advice from an attorney before entering into an agreement to take that approach.

## Inspection Response

As we mentioned, the actual negotiation regarding repairs or modifications takes place on a separate form, the Inspection Response (Form 35R).

Form 35R has three sections:

I. Buyer's Request for Repairs or Modifications (the most common modification is a reduced price)

II. Seller's Response to Buyer's Request

III. Buyer's Reply to Seller's Response

**I. BUYER'S RESPONSE OR REQUEST FOR REPAIRS OR MODIFICATION**

- ❑ Buyer's inspection of the Property is approved and the inspection contingency is satisfied.*
- ❑ Buyer's inspection of the Property is disapproved and the Agreement is terminated. The Earnest Money shall be refunded to Buyer.*
- ❑ Buyer gives notice of additional inspection(s). If requested by Seller, the inspector's recommendation is attached. The time for Buyer's response is extended as provided for in Paragraph 5 of Form 35.*
- ❑ Buyer requests the following modifications and/or repairs described below or on the attached pages. If Seller agrees to these modifications or repairs, the inspection contingency shall be deemed satisfied.**

**Note:** If Buyer provides any portion of the inspection report to Seller without Seller's written request, the inspection contingency shall conclusively be deemed waived.

Buyer _____ Date _____ Buyer _____ Date _____

If Buyer requests modifications and/or repairs, this Form 35R and any other addenda or notice pertaining to the modifications and/or repairs and amendment to the Agreement related to or resulting from the request for modifications and/or repairs shall become a part of the Agreement.

Section I of Form 35R gives the buyer a choice of four actions:

1. The buyer can approve the inspection and treat the contingency as satisfied.
2. They can disapprove the inspection, terminate the agreement, and request return of the earnest money.
3. They can give the seller notice of an additional inspection, subject to the deadline set on Form 35.
4. They can request specific repairs or modifications, such as a reduced price.

## Seller's Response to Buyer

**II. SELLER'S RESPONSE TO BUYER'S REQUEST FOR REPAIRS OR MODIFICATION.**

- ❑ Seller agrees to all of the modifications or repairs in Buyer's request. The inspection contingency is satisfied, the parties agree to proceed to Closing as provided in the Agreement, and Buyer's reply, below, is not necessary.**
- ❑ Seller offers to correct only the following conditions described below or on the attached pages:**
- ❑ Seller rejects all proposals by Buyer.*
- ❑ Seller rejects all proposals by Buyer, but proposes the following alternative modifications or repairs described below or on the attached pages:**

Section II of the form similarly gives the seller four choices:

1. The seller can agree to the repairs or modifications, and if so, the contingency is satisfied and the parties will proceed to closing.
2. The seller can offer to make only some of the repairs.
3. The seller can reject all of the buyer's proposals.
4. The seller can reject the buyer's proposals but suggest an alternate repair or modification.

## Buyer's Reply to Seller

**III. BUYER'S REPLY TO SELLER'S RESPONSE.**

- ❑ Buyer accepts Seller's response and agrees to proceed to Closing as provided in the Agreement.**
- ❑ Buyer rejects Seller's response. Buyer disapproves of the inspection and this Agreement is terminated. The Earnest Money shall be refunded to Buyer.*
- ❑ Buyer rejects Seller's response, but offers the attached alternative proposal for modification or repair. Buyer acknowledges that the inspection contingency will be waived unless Buyer and Seller reach written agreement or Buyer gives notice disapproving the inspection and terminating the Agreement before the deadline in Paragraph 6(b) of the inspection contingency (NWMLS Form 35).**

In Section III of the form, the buyer has three options for their reply to the seller.

1. The buyer can accept the seller's response, and the parties can move on to closing.
2. The buyer can reject the seller's response. This means the agreement is terminated and the buyer gets their earnest money back.
3. The buyer can reject the seller's response but propose another alternate repair or modification.

The final option—where the buyer proposes a resolution other than the one the seller chose—is very much a gamble for the buyer. That's because the buyer's reply deadline is looming.

As we said earlier, there is only one round of request, response, and reply; the parties don't get multiple bites at the apple in an ongoing circle of negotiations. If the parties don't reach a written agreement before that deadline (and the buyer doesn't pull out and terminate the agreement), then the contingency is deemed waived. The buyer will have to complete the sale without any repairs.

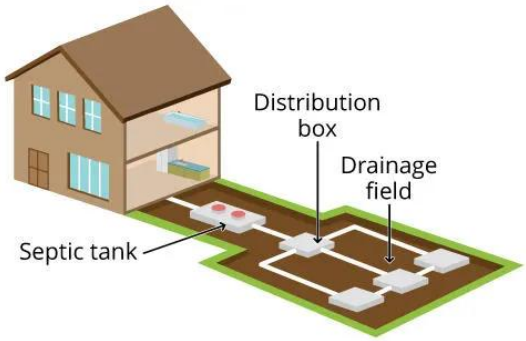
## Waiver of Inspection

In a seller's market, buyers eager to win a bidding war sometimes render the whole 35 series of forms irrelevant through a waiver of inspection. The provisions in the Inspection Addendum (Form 35) on waiving inspection and pre-inspection have been consolidated into the Inspection Waiver Addendum (Form 35W).

We'll discuss the issues raised by waiving inspections later in this course.

## Sewer System and Well Inspections

Many properties in Washington State have a septic system or use a well as the primary water source, and these features are often subject to specialized inspections.




The Septic Addendum (Form 22SI) is used to condition the purchase agreement on a satisfactory sewer inspection. The buyer has ten days (unless specified otherwise) from acceptance to give notice of disapproval of the inspection; otherwise, the contingency is deemed waived. As with other inspections, the buyer cannot give any part of the sewer inspection report to the seller without a written request.

The Well Addendum (Form 22R) is used to make the agreement contingent on the buyer's approval of the well and its water quality and quantity. The seller must deliver all well documents (water agreements, maintenance records, etc.) to the buyer within ten days after acceptance. The buyer then has five days to review the documents and terminate the agreement; otherwise, the contingency is considered waived.

The buyer also has 15 days from mutual acceptance to conduct water quantity and quality inspections and either terminate the agreement or propose well repairs; otherwise, the contingencies are deemed waived.

If the buyer does request repairs, the addendum sets forth a timeline for the seller's response (either agreeing to some or all of the repairs, proposing alternative repairs, or rejecting the request altogether), and the buyer's reply to the seller's response. The parties should use Form 22RN, the Well Inspection Response form, to indicate the specifics of the buyer's request, the seller's response, and the buyer's reply.

## Buyer Broker Compensation

Let's turn to how a buyer's agent (also called a buyer broker) is compensated. Traditionally, a buyer broker was compensated either via a buyer-paid fee or, more commonly, in a commission split in which the seller paid a commission to the listing firm that in turn shared the commission with the buyer brokerage firm.

However, commission splits have been subject to criticism as being anticompetitive and lacking transparency because neither the buyer nor seller had control over (or sometimes even knowledge of) the amount of the buyer brokerage's share. A recent lawsuit covering several midwestern states resulted in large penalties imposed on real estate firms for these reasons.

As a result, in late 2022, the Northwest Multiple Listing Service (NWMLS) revised its listing agreement's broker compensation provisions: now, the buyer's agent may be compensated by the seller, by the buyer, or by both parties. The seller agrees to compensate the listing firm and the buyer's firm directly, using separate payments; under this new approach, the buyer may need to compensate the buyer's agent as well.

Let's look at how this works, starting with the Exclusive Sale and Listing Agreement (Form 1A). Paragraph 7a is used to indicate the seller's compensation to the listing firm. In Paragraph 7b, the seller may agree to compensate the buyer brokerage firm through a percentage of the sales price, a specific flat fee, or some other arrangement. But note that it's possible a seller could refuse to offer any compensation (or only offer a nominal amount) to the buyer's agent. In fact, Paragraph 7b(v) requires the seller to acknowledge that offering compensation to the buyer brokerage firm isn't required.

**7. COMPENSATION.** Seller acknowledges that there are no standard compensation rates and the compensation in this Agreement is fully negotiable and not set by law. If during the Listing Term, Seller sells the Property and the sale closes; or the sale fails to close due to Seller's breach of the terms of the purchase and sale agreement, Seller shall pay compensation as follows:

a. Listing Firm Compensation

i. _____% of the sales price, or $ _____; or

ii. If the buyer is not represented by a buyer brokerage firm, the Listing Firm compensation shall be _____% of the sales price, or $ _____, (equal to the amount in subsection 7(a)(i) if not filled in).

b. Buyer Brokerage Firm Compensation

i. _____% of the sales price, or $ _____ to a cooperating member of MLS representing the buyer ("Buyer Brokerage Firm") ("Buyer Brokerage Firm Compensation"), which includes another broker affiliated with Listing Firm who represents the buyer; or

ii. If the Listing Broker represents both Seller and the buyer as a limited dual agent _____% of the sales price, or $ _____, (equal to the amount in subsection 7(b)(i) if not filled in).

iii. If checked, ❑ the offer to pay Buyer Brokerage Firm Compensation shall extend to licensed brokerage firms that are not members of MLS.

iv. Buyer Brokerage Firm Compensation shall be paid as set forth above, unless modified by the buyer and Buyer Brokerage Firm in a mutually accepted purchase and sale agreement. The offered amount may not be withdrawn or reduced with respect to a buyer after that buyer or the Buyer Brokerage Firm has notified the Listing Firm or Seller of that buyer's intent to submit an offer (and for three calendar days thereafter). Buyer Brokerage Firm is an intended third-party beneficiary of this Agreement.

v. Seller acknowledges that offering compensation to Buyer Brokerage Firm is not required.

c. Expiration of the Listing Term. If Seller shall, within _____ days (180 days if not filled in) after the expiration of the Listing Term, sell the Property to any person to whose attention it was brought through the signs, advertising or other action of the Listing Firm, or on information secured directly or indirectly from or through Firm, during the Listing Term, Seller will pay Firm and Buyer Brokerage Firm the above compensation at closing. Provided, that if Seller pays compensation to other licensed brokerage firms in conjunction with a sale, the amount of compensation payable to Firm shall be reduced by the amount paid to such other listing firm and the compensation payable to Buyer Brokerage Firm shall be reduced by the amount paid to such other buyer brokerage firm.

d. Cancellation Without Legal Cause. If Seller cancels this Agreement without legal cause, Seller may be liable for damages incurred by Firm as a result of such cancellation, regardless of whether Seller pays compensation to another licensed brokerage firm.

e. Additional Consent. Seller consents to Firm receiving compensation from more than one party and to sharing of compensation between firms, provided that any terms and amounts offered to or by Firm are disclosed as required by RCW 18.86.030.

Sample

Next, let's look at the Buyer Brokerage Services Agreement (NWMLS Form 41), which is used to create an agency between the buyer and buyer brokerage firm.

**5. COMPENSATION.** Buyer acknowledges that there are no standard compensation rates and the compensation in this Agreement is fully negotiable and not set by law. The compensation for Buyer Brokerage Firm's services (the "Compensation") shall be:

a. _____ % of purchase price; $_____; other: _____

b. If Buyer Broker is a limited dual agent and represents both Buyer and the seller, then the Compensation shall be (equal to the amount in subsection 5(a) if not filled in):

_____ % of purchase price; $_____; other: _____

In Paragraph 5, the buyer agrees to pay the buyer brokerage firm either a percentage of the sales price or a specified flat amount. But it goes on to state in Paragraph 6 that if the seller's listing agreement includes an offer of compensation for the buyer's agent, the buyer may accept it on behalf of the buyer brokerage firm in the purchase and sale agreement form.

**6. SELLER COMPENSATION OFFER.**

A seller may, but is not required to, offer compensation to Firm for representing Buyer in the purchase of seller's real property ("Seller's Offer"). Seller's Offer is disclosed in the listing, shall be stated in the purchase and sale agreement, and may be accepted by Buyer, on behalf of Firm, in the purchase and sale agreement.

a. Seller's Offer Equal to Compensation. If Seller's Offer is equal to the Compensation, Buyer shall accept Seller's Offer and Buyer shall not be obligated to separately pay Firm.

b. Seller's Offer Greater Than Compensation. If Seller's Offer is greater than the Compensation, Buyer shall accept Seller's Offer and Buyer shall not be obligated to separately pay Firm. The amount of Seller's Offer that is greater than the Compensation shall be:

❑ Paid to Firm;
❑ Credited to Buyer (to the extent allowed by Buyer's lender) and any non-allowed amount paid to Firm;
❑ Credited to the seller; or
❑ Other: _____.

c. Seller's Offer Less Than Compensation. If Seller's Offer is less than the Compensation, Buyer shall accept Seller's Offer (if any) and:

❑ Pay the balance of the Compensation to Firm at closing;
❑ Request that the seller pay the balance of the Compensation to Firm as a part of Buyer's offer to purchase the property; or
❑ Other: _____.

If the sale closes, the compensation received from the seller will be applied to the buyer's compensation obligation under the buyer agency agreement.

According to Paragraph 6a, if the amount the seller pays is equal to what the buyer owes, the buyer isn't obligated to pay anything further.

Paragraph 6b states that if the amount the seller pays is more than what the buyer owes, the excess is credited to the buyer brokerage firm, the buyer, or the seller.

Finally, according to Paragraph 6c, if the amount the seller pays is less than what the buyer owes, the buyer may either pay the buyer brokerage firm the difference at closing or ask the seller to pay the difference.

You can see that under these new rules, the buyer broker's compensation is simply part of the negotiated purchase price. Who is paying the buyer broker and who that licensee represents is also made clear.

Note that in the buyer agency agreement, the parties can decide whether the buyer broker will show listings for which there is no seller's offer of compensation to the buyer brokerage firm. (This practice of "filtering" by compensation raises ethical issues, and some professional associations forbid it.)

a. Showing Properties. Buyer Broker ❑ shall; ❑ shall not (shall if not checked) be obligated to show properties to Buyer for which there is no Seller's Offer and Buyer has not agreed to pay the Compensation.

## Compensation Disbursement Form

NWMLS Form 40, the Compensation Disbursement Form functions as escrow instructions directing the closing agent how to disburse compensation to the buyer brokerage firm and listing brokerage firm.

The top half of the form is used to identify the parties, the listing, and the closing agent. Next, there are blanks for monetary amounts and the buyer brokerage firm's name and address. Note that there are spaces for up to three separate disbursements. This section of the form must be signed by an authorized representative of the buyer brokerage firm.

Form 40
Compensation Disbursement Form
Rev. 7/23
Page 1 of 1

**COMPENSATION DISBURSEMENT FORM**
**(SELLER FUNDED)**

©Copyright 2023
Northwest Multiple Listing Serv
ALL RIGHTS RESERVED

**Buyer Brokerage Firm must:**
**(1) Fill in the following completely and sign.**
**(2) Send a copy to the Listing Firm and Closing Agent.**
**(3) Retain a copy.**

Today's Date: _____

Buyer _____ (Buyer) _____ (Buyer)

Seller _____ (Seller) _____ (Seller)

Listing No. _____ Purchase Price: _____

Property Address _____ (Address) _____ (City) _____ (State) _____ (Zip)

Closing Agent _____

Closing Agent's Address _____ (Address) _____ (City) _____ (State) _____ (Zip)

The Closing Agent is instructed to disburse the Buyer Brokerage Firm's compensation and mail it direct with copies of this form as follows:

$ _____ to _____ (Buyer Brokerage Firm)
(Address) (City) (State) (Zip)

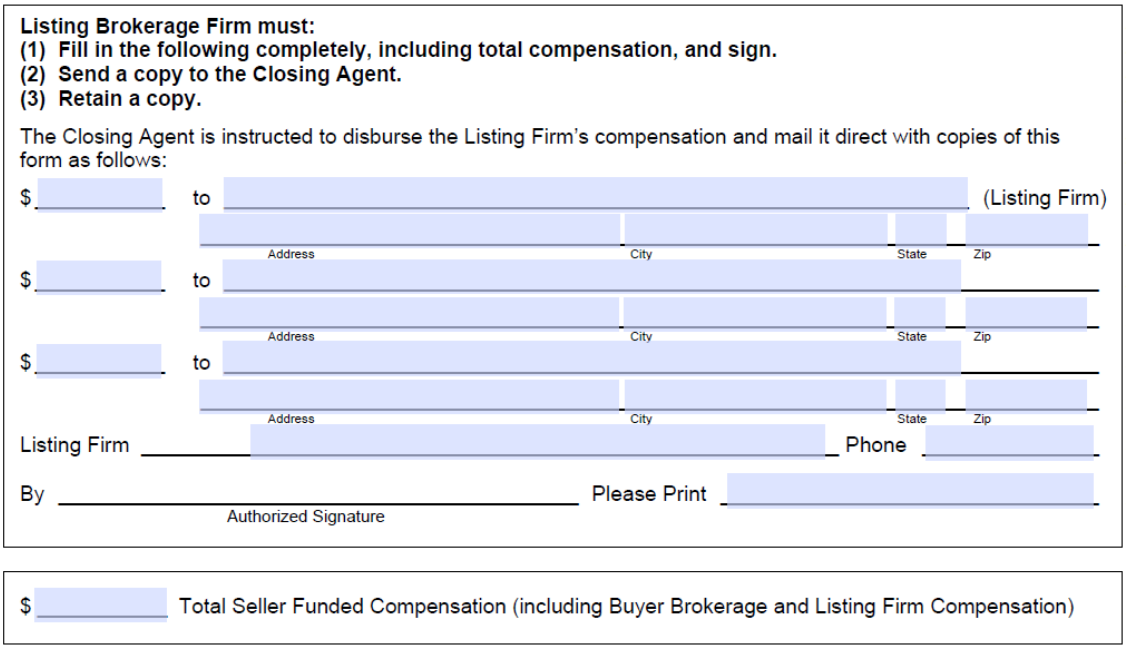
$ _____ to _____
(Address) (City) (State) (Zip)

$ _____ to _____
(Address) (City) (State) (Zip)

Buyer Brokerage Firm _____ Phone _____

By _____ Please Print: _____
Authorized Signature

The bottom half of the form similarly may be used to direct up to three disbursements and must be signed by a representative of the listing brokerage firm.



**Listing Brokerage Firm must:**
**(1) Fill in the following completely, including total compensation, and sign.**
**(2) Send a copy to the Closing Agent.**
**(3) Retain a copy.**

The Closing Agent is instructed to disburse the Listing Firm's compensation and mail it direct with copies of this form as follows:

$ _____ to _____ (Listing Firm)
Address City State Zip

$ _____ to _____
Address City State Zip

$ _____ to _____
Address City State Zip

Listing Firm _____ Phone _____

By _____ Please Print _____
Authorized Signature

$ _____ Total Seller Funded Compensation (including Buyer Brokerage and Listing Firm Compensation)

At the bottom is a blank to fill in the total seller funded compensation amount. Both firms must forward copies of their signed forms to the closing agent and retain copies for their records.

## Addendum for Buyer Credit

The Buyer Brokerage Firm's Compensation Addendum (Form 41C) has been revised, simplified, and renamed as Addendum for Buyer Credit (Form 41C). This addendum is used only to address a credit to the buyer.

Click here to open the Addendum for Buyer Credit (Form 41C).

Because the amount of buyer brokerage firm compensation to be paid by the seller is in the purchase and sale agreement, the Buyer Brokerage Firm's Compensation Addendum is no longer used for the buyer to negotiate buyer brokerage firm compensation adjustments.

Instead, the buyer may use the revised Form 41C to request a credit from the buyer if the Seller's Offer is greater than the buyer's brokerage compensation. This form removes all buyer brokerage firm compensation adjustments, creating a new "credit to buyer" provision.

The purpose of the WA Addendum for Buyer Credit (revised form 41C) is to document a situation where the seller agrees to provide a credit to the buyer, but the seller's offered credit is less than the full amount of compensation that the buyer's broker is owed. The addendum asks the seller to cover the difference, ensuring the buyer's broker receives their full compensation while also providing a credit to the buyer at closing.

**Key functions of the form**

- Requests additional seller credit: It is used when a seller's offer of compensation to the buyer's broker is insufficient to meet the buyer's contractual obligation to their broker.
- Specifies the credit: It clearly states the difference between the seller's original offer and the total compensation due, asking the seller to contribute the additional amount to cover the difference.
- Clarifies closing credit: The form ensures that the total amount of the credit (seller's initial offer plus the additional amount requested) is given to the buyer at closing, as a credit towards their closing costs or obligations.
- Subject to lender approval: The form notes that the buyer's credit is subject to the approval of the buyer's lender(s), especially if the buyer is obtaining a loan.
- Documents a specific scenario: It serves as an addendum to the purchase agreement to address a specific situation where the seller's compensation to the buyer's broker is not enough to cover the full brokerage fee, which is a situation governed by the buyer's brokerage agreement.

Note that the buyer and seller must initial the Addendum for Buyer Credit to indicate their acceptance and to incorporate it into the broader purchase and sale agreement.

## Notice of Low Appraisal

Let's start our discussion of new and revised forms. We'll begin with NWMLS Form 22AN, Notice of Low Appraisal. The buyer uses this form to notify the seller that the buyer's lender's appraisal has come in lower than the purchase price (what the buyer and seller agreed to).

A low appraisal can seriously jeopardize a sale: many buyers are understandably reluctant to pay more for a property than a professional appraiser says it's worth. If the transaction is contingent on financing, the purchase agreement usually states that the buyer doesn't have to complete the sale if the appraisal comes in low.

And even if the buyer wants to go ahead with the purchase, they may not be able to afford to. Since the purchase loan is based on the sales price or the appraised value, whichever is less, a low appraisal means a smaller loan—and a bigger down payment, which may mean additional cash that the buyer doesn't have on hand.

Form 22AN gives the seller four options to respond to the buyer's notice of low appraisal:

1) Notify the buyer that a reappraisal or reconsideration of value shows the property's value is equal to the purchase price. The buyer agrees to promptly seek their lender's approval of the new valuation.
2) Consent to reducing purchase price to match appraisal (or reappraisal) value.
3) Propose a specified reduction in the purchase price.
4) Reject the notification of low appraisal.

**SELLER'S RESPONSE:**

- ❑ **NOTICE OF REAPPRAISAL/RECONSIDERATION OF VALUE.** Seller gives notice that a reappraisal or reconsideration of value has been completed in an amount not less than the Purchase Price. Buyer shall promptly seek lender's approval of the reappraisal/reconsideration of value.
- ❑ **CONSENT TO REDUCTION IN PURCHASE PRICE.** Seller consents to reduce the Purchase Price to $_____ (an amount not more than the amount specified in the appraisal or reappraisal by the original appraiser, or an appraisal by another appraiser acceptable to Buyer's lender, whichever is higher). *A consent to the reduction in Purchase Price is not a notice and must be signed by each Seller.
- ❑ **PROPOSAL TO REDUCE PURCHASE PRICE.** Seller proposes to reduce the Purchase Price to $_____ (an amount more than the appraised value of the Property). *A proposal to reduce the Purchase Price is not a notice and must be signed by each Seller.
- ❑ **NOTICE OF REJECTION OF LOW APPRAISAL.** Seller gives notice that Seller rejects Buyer's notice of low appraisal and (1) will not cause a reappraisal or reconsideration of value to be completed; (2) does not consent to a reduction of the Purchase Price; and (3) does not propose to reduce the Purchase Price.

_____ _____ _____ _____
Seller Date Seller Date

**BUYER'S REPLY:**

- ❑ **NOTICE OF TERMINATION.** Buyer gives notice that Buyer elects to terminate this Agreement. The Earnest Money shall be refunded to Buyer.
- ❑ **NOTICE OF WAIVER OF FINANCING CONTINGENCY.** Buyer waives the financing contingency in the Financing Addendum (Form 22A), including Paragraph 5 (Appraisal Less Than Sale Price).
- ❑ **ACCEPTANCE OF REDUCED PURCHASE PRICE.** Buyer accepts Seller's proposal to reduce the Purchase Price to an amount more than the appraised value of the Property pursuant to Paragraph 5(b)(iii) in the Financing Addendum (Form 22A). Buyer represents that Buyer has sufficient funds to close the sale under these terms. *Buyer's acceptance of Seller's proposal to reduce the purchase price is not a notice and must be signed by each Buyer.
- ❑ **BUYER'S OPTION – FHA/VA/USDA.** Seller consented to reduce the Purchase Price to an amount not more than the appraised value of the Property pursuant to Paragraph 5(b)(ii) in the Financing Addendum (Form 22A). Buyer is obtaining FHA, VA, or USDA financing and gives notice that Buyer will close at the reduced price. *Buyer's notice that Buyer will close at the reduced price must be signed by each Buyer.

In turn, the buyer has four options to reply to the seller's response:

1) Terminate the agreement and receive a refund of the earnest money.
2) Waive the financing contingency.
3) Accept the seller's proposal to reduce the purchase price.
4) Agree to close at reduced price which seller consented to (this option applies if the buyer is using FHA, VA, or USDA financing).

At each step in this process (the buyer's notice, the seller's response, and the buyer's reply), the party must sign and date the section they've completed.

## Notice of Appraisal Work Order

Another form used in connection with low appraisals is NWMLS Form 22AWO, Notice of Appraisal Work Order. The buyer's lender's appraisal value may be conditioned on the completion and approval of work orders prior to closing. In this situation, the buyer would use Form 22AWO to notify the seller of this condition. A copy of the appraisal work order must be attached to the form.

Form 22AWO
Notice of Appraisal Work Order
Rev. 7/23
Page 1 of 1

**NOTICE OF APPRAISAL WORK ORDER**

©Copyright 2023
Northwest Multiple Listing Service
ALL RIGHTS RESERVED

The following is part of the Purchase and Sale Agreement dated _____ 1

between _____ (Buyer) _____ (Buyer) ("Buyer") 2

and _____ (Seller) _____ (Seller) ("Seller") 3

concerning _____ (Address) _____ (City) _____ (State) _____ (Zip) (the "Property"). 4

**BUYER'S NOTICE OF APPRAISAL WORK ORDER** 5

Pursuant to Paragraph 5(d) in the Financing Addendum (Form 22A), Buyer gives notice that the appraised value is conditioned on the completion and approval of work orders prior to Closing ("Appraisal Work Order"). A copy of the Appraisal Work Order is attached to this notice. 6 7 8

_____ Buyer _____ Date _____ Buyer _____ Date 9

## Notice to Second Buyer

The last new NWMLS form we'll look at is form 39N, Notice to Second Buyer. This form comes into play when the seller has accepted a backup offer from a second buyer.

This commonly occurs when the purchase and sale agreement the seller has already entered into is contingent on the sale of the home of that first buyer. Once the seller has accepted the backup offer, they notify the first buyer with a "bump notice" and give the first buyer a short window to satisfy or waive the contingency.

Form 39N
Notice to Second Buyer
Rev. 7/23
Page 1 of 1

**NOTICE TO SECOND BUYER**

©Copyright 2023
Northwest Multiple Listing Service
ALL RIGHTS RESERVED

The following is part of the Purchase and Sale Agreement dated _____ 1

between _____ (Buyer) _____ (Buyer) ("Buyer") 2

and _____ (Seller) _____ (Seller) ("Seller") 3

concerning _____ (Address) _____ (City) _____ (State) _____ (Zip) (the "Property"). 4

☐ **Seller's Notice – First Buyer's Contingency Satisfied or Waived.** Seller hereby gives notice to Second Buyer that First Buyer responded to the Bump Notice and satisfied or waived First Buyer's Sale of Property Contingency. The Second Sale Agreement is terminated and the Earnest Money shall be refunded to Second Buyer. 5 6 7

☐ **Seller's Notice – First Buyer Terminated Prior Sale.** Seller hereby gives notice to Second Buyer that First Buyer responded to the Bump Notice by terminating the Prior Sale. The Second Sale Agreement shall proceed to Closing. 8 9

_____ Seller _____ Date _____ Seller _____ Date 10

At the end of that window, the seller uses Form 39N to notify the second buyer of how the first buyer responded. The first checkbox is used to notify the second buyer the first buyer removed the contingency and the transaction is proceeding. If so, the second sale is terminated, and the second buyer will be refunded the earnest money.

Alternatively, the second checkbox is used to notify the seller the first buyer terminated the sale, so the transaction with the second buyer can go forward.

Previously, this information was conveyed from the seller to buyer using Form 90K; now 39N should be used.

## Early or Delayed Occupancy




In most residential transactions, possession is transferred to the buyer at closing. However, sometimes the buyer wants to take possession a few days or even a few weeks earlier, or the seller wants a few extra days to vacate the property

Though this may not seem like a big deal, transfer of possession to the buyer before closing can cause problems.

Allowing the buyer to move in early makes the seller the buyer's landlord; conversely, letting the seller stay on in the house after closing makes the buyer the seller's landlord. This means that Washington's Residential Landlord-Tenant Act applies, which provides a tenant with significant protections.

Let's say the buyer moves in before closing but defaults on the purchase and sale agreement or fails to fulfill a contingency. If the buyer/tenant refuses to vacate the property in accordance with the terms of the rental agreement, this creates a tenancy at sufferance, making it difficult to sell the property to anyone else.

The seller might need to take legal action to evict him, and the eviction process could take a long time. Similarly, if the seller refuses to move out as scheduled, legal action to evict the seller becomes necessary, with all the stress and expense that implies.

For these reasons, it's important for parties in these situations to use either NWMLS Form 65A, Rental Agreement—Buyer Occupancy Prior to Closing, or Form 65B, Rental Agreement—Seller Occupancy After Closing.

Let's look at the buyer occupancy rental agreement first. It begins by cautioning the seller of the risks of letting the buyer move in before closing. After filling in the parties' and property's identifying information, the parties add the rental rate and dates of occupancy.

Often, the total rent amount (including any deposit) is paid in a lump sum ahead of the rental period. The rental agreement terminates when the sale closes, and any unused advance rent paid to the seller/owner is prorated and refunded to the buyer/renter.

Form 65A
Rental – Early Occupancy
Rev. 7/23
Page 1 of 2

**RENTAL AGREEMENT**
Buyer Occupancy Prior to Closing

©Copyright 2023
Northwest Multiple Listing Service
ALL RIGHTS RESERVED

**Notice**: There are many risks associated with giving a buyer the right to occupy a property prior to closing. If a buyer defaults under the purchase and sale agreement, fails to close the sale, and fails to vacate the property, a seller may have limited rights to remove the buyer from the property. A seller should consult with an attorney before entering into an agreement that provides a buyer with occupancy prior to closing.

Date: _____

Renter(s)_____ (Buyer/Renter) _____ (Buyer/Renter) _____

agree(s) to rent from Owner _____ (Seller/Owner) _____ (Seller/Owner) _____

the property commonly known as _____ (Address) _____ (City) _____

_____ (State) _____ (Zip) _____ (County), (the "Property") on the following terms and conditions:

1. **RENT.** The rent shall be $_____ per _____.
   Rent shall be payable to _____
   at _____.
   Other: _____.

2. **TERM AND TERMINATION.** Renter is entitled to possession on _____ at _____ (9:00 p.m. if not filled in). This Agreement and Renter's right to possession shall terminate on _____ at _____ (9:00 p.m. if not filled in). If Renter purchases the Property from Owner, then this Agreement shall terminate on closing of the sale. At the time of closing, advance rent paid to Owner shall be pro-rated on a daily basis, and Renter shall be credited with any unused portion thereof. If this Agreement is terminated prior to the termination date set forth in this paragraph, then any advance rent shall be pro-rated on a daily basis, and the unused portion refunded to Renter immediately upon Renter's vacating the Property. If Renter holds over without the written consent of Owner, Renter shall be liable for rent and all other damages sustained by Owner because of such holdover.

In Paragraph 3, the seller/owner agrees to maintain fire and hazard insurance policies on the property; the buyer/renter is responsible for insuring their personal property. In Paragraph 4, the buyer/renter agrees to pay all utilities.

The buyer/renter cannot make improvements or alterations to the property without the owner's written permission; nor can they sublet the property or assign any renter's rights.

Pay attention to Paragraph 6, which notes the rental agreement is subject to the state Unlawful Detainer Act and states that a default on the underlying purchase and sale agreement constitutes a default on the rental agreement. At that point, if the buyer/renter refuses to vacate the property, the seller/owner would be entitled to bring an unlawful detainer action.

Paragraph 6 also states the renter's occupancy is NOT governed by the state Residential Landlord-Tenant Act.

3. **INSURANCE.** Owner agrees to keep the Property insured against fire and other normal casualties. All proceeds of any such policy shall be payable to Owner alone. Owner shall have no responsibility for insuring anything in or on the Property which belongs to Renter. Renter is advised that renter's insurance is available to Renter for coverage related to liability for bodily injury, property damage, and for the theft, loss, or damage to Renter's personal property.

4. **UTILITIES.** Renter agrees to pay for all utilities, including garbage collection charges, during the term of this Agreement.

5. **IMPROVEMENTS.** Renter shall not be entitled to make any improvements or alterations in the Property, including painting, during the term of this Agreement without the written permission of Owner. In the event this Agreement terminates for any reason other than Renter's purchase of the Property, Renter will return the Property to Owner in as good a condition as it presently is, ordinary wear and tear excepted.

6. **UNLAWFUL DETAINER.** This Agreement is subject to the provisions of the Unlawful Detainer Statute, RCW 59.12. If Renter and Owner have entered into a purchase and sale agreement for the purchase of the Property, then a default under that purchase and sale agreement shall constitute a default under this Agreement, and Owner shall be entitled to all remedies provided for in the Unlawful Detainer Statute, RCW 59.12. The parties acknowledge that Renter's occupancy is not governed by the Residential Landlord Tenant Act (RCW 59.18).

The remainder of the form contains fairly standard residential lease agreement provisions regarding smoke and carbon monoxide detectors, lead-based paint, mold, and attorney's fees. Both parties must sign the agreement.

Let's look at the corresponding form used if the seller wants to stay past closing. It's similar to the buyer rental agreement: it covers the rental rate, the occupancy term, insurance, and utility responsibilities; it states the rental agreement is subject to the Unlawful Detainer Act but not subject to the Residential Landlord-Tenant Act. However, some notable differences exist, which we'll outline here.

1. **POSSESSION.** Renter is entitled to possession commencing on the closing of the sale of the Property from Renter (Seller) to Owner (Buyer) ("Closing"). If the sale does not close, then this Agreement is void.
2. **RENT.** The rent shall be $_____ per _____ .
   Rent shall be payable to _____
   at _____ .
   Other: _____ . No rent may be paid or accepted more than three months after Closing.
3. **TERM.** This Agreement and Renter's right to possession shall terminate on _____ ("Termination Date") at _____ (9:00 p.m. if not filled in), which shall not be more than three months after Closing. Upon termination, any advance rent shall be pro-rated on a daily basis, and the unused portion refunded to Renter immediately upon Renter's vacating the Property. If Renter holds over without the written consent of Owner, Renter shall be liable for rent and all other damages sustained by Owner because of such holdover to the extent permitted by applicable laws.

   Renter agrees that pursuant to this Paragraph 3, Owner has provided to Renter the requisite advance written notice that: (i) the occupancy granted hereunder shall automatically expire and/or terminate upon the Termination Date without further notice to Renter, (ii) Renter is not entitled to any rights to extend the Termination Date or to continue to occupy or use the Property beyond the Termination Date, and (iii) Renter must immediately vacate and surrender the Property to Owner on the Termination Date as further provided in this Agreement. The parties acknowledge that Renter's occupancy is not governed by the Residential Landlord Tenant Act (RCW 59.18) provided that the terms and conditions in this Agreement are not modified by the parties. However, this Agreement is subject to the provisions of the Unlawful Detainer Statute (RCW 59.12).

First, the seller occupancy agreement limits the rental period, as well as the period that the seller/renter can pay rent to the buyer/owner, to no more than three months.

Second, the seller/renter agrees the tenancy will end on its stated termination date without any further notice from the buyer/owner, and the seller/renter will vacate the property immediately on that date.

8. **RENTER REPRESENTED.** Renter warrants that Renter was represented by an attorney licensed to practice law in Washington or by a real estate broker licensed under RCW 18.85 during negotiation of the purchase and sale agreement for the sale of the Property or at the time of Closing.

Finally, in Paragraph 8, the seller/renter makes two warranties: first, they were represented by a Washington-licensed attorney or real estate broker in the negotiation of the purchase and sale agreement; and second, at the time of closing, the property was not a distressed home.

The parties must sign both rental agreement forms.

## Agency Law Pamphlet

As you no doubt know, Washington's real estate agency law requires a licensee to give the parties they provide services to a pamphlet containing the provisions of the real estate agency law. A party must receive this pamphlet before signing an agency agreement, before signing an offer, before consenting to a dual agency, or before waiving any agency rights, whichever comes first.

The pamphlet is meant to be a tool for brokers to use when explaining agency relationships to their customers. It summarizes the laws relating to real estate agency relationships and describes the different duties owed by brokers to their clients and customers.

However, its text, dictated by RCW 18.86.120 and originally consisting of statutory language repeated verbatim has been criticized as excessively long and confusing. So, the legislature changed the pamphlet's required language, effective January 1, 2024. The new version is simplified and easier for

consumers to understand. Remember, of course, providing the pamphlet is only one of a licensee's duties; it's not meant to replace full agency disclosure.

Here is a partial sample of the language of the new pamphlet:

> ***Real Estate Brokerage in Washington***
>
> ***Introduction***
>
> *This pamphlet provides general information about real estate brokerage and summarizes the laws related to real estate brokerage relationships. It describes a real estate broker's duties to the seller/landlord and buyer/tenant. Detailed and complete information about real estate brokerage relationships is available in chapter* 18.86 *RCW.*
>
> *If you have any questions about the information in this pamphlet, contact your broker or the designated broker of your broker's firm.*
>
> ***Licensing and Supervision of Brokers***
>
> *To provide real estate brokerage services in Washington, a broker must be licensed under chapter* 18.85 *RCW and licensed with a real estate firm, which also must be licensed. Each real estate firm has a designated broker who is responsible for supervising the brokers licensed with the firm. Some firms may have branch offices that are supervised by a branch manager and some firms may delegate certain supervisory duties to one or more managing brokers.*
>
> *The Washington State Department of Licensing is responsible for enforcing all laws and rules relating to the conduct of real estate firms and brokers.*

## Earnest Money

Let's turn our attention to some issues that can come up in connection with the buyer's earnest money deposit. NWMLS Form 21, the Residential Purchase and Sale Agreement sets forth the general requirements for the deposit.

Let's start with timely delivery of the deposit. According to Paragraph b of the general terms, the buyer will deliver the earnest money within two days of mutual acceptance of the offer. If the earnest money is sent by mail, it must arrive at the office of the buyer brokerage firm or the closing agent by the delivery date. Failure to timely deliver the deposit is a breach of the purchase agreement. If the seller is willing to extend the deadline (to keep the transaction alive), the parties should agree to a new deadline and use a written addendum to incorporate this change into the contract.

**b. Earnest Money**. Buyer shall deliver the Earnest Money by the Delivery Date listed in Specific Term No. 7 (2 days after mutual acceptance if not filled in) to the party holding the Earnest Money (Buyer Brokerage Firm or Closing Agent). If sent by mail, the Earnest Money must arrive at Buyer Brokerage Firm or Closing Agent by the Delivery Date. If the Earnest Money is held by Buyer Brokerage Firm and is over $10,000.00 it shall be deposited into an interest bearing trust account in Buyer Brokerage Firm's name provided that Buyer completes an IRS Form W-9. Interest, if any, after deduction of bank charges and fees, will be paid to Buyer. Buyer shall reimburse Buyer Brokerage Firm for bank charges and fees in excess of the interest earned, if any. If the Earnest Money held by Buyer Brokerage Firm is over $10,000.00 Buyer has the option to require Buyer Brokerage Firm to deposit the Earnest Money into the Housing Trust Fund Account, with the interest paid to the State Treasurer, if both Seller and Buyer so agree in writing. If the Buyer does not complete an IRS Form W-9 before Buyer Brokerage Firm must deposit the Earnest Money or the Earnest Money is $10,000.00 or less, the Earnest Money shall be deposited into the Housing Trust Fund Account. Buyer Brokerage Firm may transfer the Earnest Money to Closing Agent at Closing. If all or part of the Earnest Money is to be refunded to Buyer and any such costs remain unpaid, the Buyer Brokerage Firm or Closing Agent may deduct and pay them therefrom. The parties instruct Closing Agent to provide written verification of receipt of the Earnest Money and notice of dishonor of any check to the parties and Brokers at the addresses and/or fax numbers provided herein.

Assuming the earnest money has been delivered, what happens if one party defaults on the purchase agreement? Form 21, Paragraph 8, contains two checkbox options for the seller's remedy in the event of the buyer's default (more details set forth in Paragraph o). If checked, the first box limits the seller's remedy to keeping the earnest money deposit as liquidated damages.

If the second box is checked, the seller may still choose to accept the earnest money deposit as the sole remedy, they might choose to sue the buyer for the actual damages they suffered, or they may sue for specific performance, asking the court to enforce the purchase and sale agreement. Though some sellers may prefer being able to choose a different remedy, most sellers will be satisfied with the ease and certainty of receiving a fixed amount, meaning the earnest money deposit as liquidated damages.

**8. Default:** (check only one) ❑ Forfeiture of Earnest Money; ❑ Seller's Election of Remedies

Under Washington law, no more than 5% of the property's sales price can be treated as liquidated damages in a purchase and sale agreement. If the buyer's earnest money deposit was more than 5% of the sales price, the seller will have to return the excess.

For example, suppose the sales price was $400,000 and the earnest money deposit was $25,000. If the buyer defaulted, the seller could keep $20,000 as liquidated damages (5% of the sales price) but would have to return the extra $5,000.

Though this sounds fairly straightforward, in reality, when a transaction falls apart, disputes often occur over who is entitled to the earnest money. Paragraph b of Form 21 addresses this situation. If one party submits a written demand for the earnest money, the deposit holder (the escrow agent or the brokerage holding the funds) must notify the other party or parties in writing and give them a chance to submit written objections. If there are no objections, the deposit holder must release the funds as demanded.

Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent. If either party fails to execute the release form, a party may make a written demand to the Closing Agent for the Earnest Money. Pursuant to RCW 64.04.220, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of Closing Agent's notice, Closing Agent shall disburse the Earnest Money to the party making the demand within 10 days of the expiration of the 20 day period. If Closing Agent timely receives an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursal of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this Agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a Buyer Brokerage Firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to $750.00 for the costs thereof. The parties acknowledge that RCW 64.04.220 requires the court to award the Closing Agent its reasonable attorneys' fees and costs associated with an interpleader action.

Draft

But if another party does object or demand the funds, the deposit holder must file an interpleader action, turning the matter over to a court. In an interpleader action, the court decides which party is the rightful owner of the funds. RCW 64.04.220 sets specific deadlines for the interpleader process.

Remember, the earnest money never passes directly from buyer to seller: The buyer gives the deposit to the buyer brokerage firm (who passes it on to the closing agent after mutual acceptance) or directly to the closing agent. When the transaction closes, the closing agent releases the funds to the seller.

## Key Terms

**Evidence of Funds Addendum**

The Evidence of Funds Addendum is used to provide evidence of non-contingent funds (money that the buyer already has in hand) or to disclose the buyer is relying on contingent funds not yet received, such as loan proceeds, a forthcoming gift, or funds from the liquidation of other assets.

**Inspection Addendum**

The Inspection Addendum form allows a buyer to make a sale contingent on a satisfactory inspection; one significant recent change to the addendum is that buyers should no longer give copies of the inspection report to sellers and should instead rely on contractors' proposals for repairs.

**Inspection Response**

The Inspection Response form is used for negotiations between the buyer and seller following the inspection, including the buyer's request for repairs, the seller's response, and the buyer's reply to the seller.

**Closing and Possession**

If possession will not be transferred on the closing date, the parties should use an interim rental agreement to establish the terms of the transitional period.

**The Law of Real Estate Agency pamphlet**

Before a party can consent to the agency (after the agency is disclosed to that party), the broker must give the party a copy of The Law of Real Estate Agency pamphlet.

**Interpleader**

If a dispute arises as to who is entitled to the earnest money deposit, the closing agent may file a court action and turn the funds over to the court, which then resolves the dispute.

# CHAPTER 2: LEGISLATIVE UPDATE

## Chapter Introduction

In this chapter, we'll cover some recent changes in state law, starting with significant changes to the real estate agency law. Then we'll look at some new legislation aimed at increasing the supply and affordability of housing in Washington.

## Chapter Overview

After completing this chapter, you should be able to:

- Summarize recent changes in the real estate agency law.
- Discuss recent state legislation impacting day-to-day real estate practices.

## Reforming Real Estate Agency Law (SSB 5191)

Washington's real estate agency law (RCW 18.86), which governs real estate agency relationships, was originally enacted in 1997. That original version of the law doesn't contain certain important consumer protections and doesn't mandate some practices that are now considered industry standard.

To address these gaps, the legislature passed an agency law reform bill clarifying that brokers owe legal duties to all parties in a transaction and requiring improved disclosure of those duties. The bill also requires written brokerage services agreements. These changes will go into effect January 1, 2024.

Let's start with duties owed to all parties. In 2020, the Washington state Court of Appeals ruled that a real estate broker owed general statutory duties (reasonable care and skill, honesty and good faith, presenting all written communications, disclosure of material facts, accounting, providing agency pamphlet, and agency disclosure) only to the broker's own client (*Falcon Properties vs. Bowfits*).

To re-establish the statute's intended consumer protections, the revised law clarifies that the statutory duties apply to brokers in their dealings with ALL parties to a transaction and not just dealings with their own clients.

The revised law also addresses the issue of dual agency. First, it defines a "limited dual agency" as either when the buyer and seller are represented by the same broker or when the buyer and seller are each represented by a broker working for the same firm. In this second scenario, the individual brokers represent their respective clients, and the designated broker and managing broker are limited dual agents.



The revised law requires the clients to affirmatively consent, in writing, to a limited dual agency and to acknowledge the broker cannot advocate for any terms that benefit one party to the detriment of the other. It also updates the agency law pamphlet (discussed earlier) to better explain dual agency to consumers.

Finally, the revised law now requires brokers to enter into written services agreements (i.e., buyer representation agreements) with the buyers they work with. Previously, written agreements, i.e., listing agreements, were only required for brokers working with sellers.

These buyer representation agreements (also known as service agreements or buyer agency agreements) must address whether the agency relationship is exclusive (meaning the client cannot enter into an agency relationship with another firm during the agency term), the broker's compensation, and duration of the agency term (60 days is the default length).

This type of agreement provides transparency regarding how the broker is compensated (often via seller-paid commission) and allows the buyer to negotiate the terms. Having the various elements of the buyer broker agency relationship defined at the outset, in writing, helps protect the buyer and the broker.

## Recent Legislation



As most Washington residents know, the state's recent rapid population growth has led to a statewide housing shortage and, in many areas, an affordable housing crisis. To address this issue, in 2023, the state legislature passed a number of bills aimed at helping to increase the housing supply and to create more affordable options. All of these bills were signed into law by the Governor of Washington and became effective July 23, 2023.

We'll give a brief overview of these new laws as well as several other new laws that affect real estate practices.

## HB 1042: Use of Existing Buildings for Residential Purposes

To make it easier to convert underutilized or vacant buildings into housing, HB 1042 eliminates certain existing restrictions on new units built within existing buildings.

For example, it bans limits on housing density, parking requirements, and extra permitting requirements and design standards. It also prohibits denying a building permit application simply because the existing structure is a nonconforming use.

## HB 1046

**HB 1046: Expanding Housing Supply by Supporting Ability of Public Housing Authorities to Finance Affordable Housing Developments by Re-benchmarking Area Median Income Limits**

Previously, when public housing authorities partnered with private developers to finance low-income housing, those units could only be rented to households whose income did not exceed 50% of the area median. (For units developed in partnership with government entities, the income limit was 60% of the median.) HB 1046 raises both of those percentages to 80% of median income, so more households may qualify for low-income housing.

## HB 1070

**HB 1070: Exempting Sale and Leaseback of Property by Seller from Residential Landlord-Tenant Act When Seller Agrees to Written Lease at Closing**

In a sale-leaseback, the seller remains on the property for a period after closing while paying rent to the buyer. Previously, under this arrangement, the buyer became a landlord subject to the state Residential Landlord-Tenant Act (RLTA) and its eviction and just cause requirements.

HB 1070 exempts a sale-leaseback from the RLTA, as long as the parties sign a written lease at closing for no longer than three months, and the buyer does not accept any rent from the seller after three months. The property cannot be a distressed home, and the seller must have been represented in the transaction by a licensed Washington attorney or real estate broker.

## HB 1074

**HB 1074: Addressing Documentation and Processes Governing Landlord's Claim for Damage to Residential Premises**

HB 1074 clarifies what is required of a landlord who wants to retain any part of a security deposit after a tenant moves out, to cover damages or cleaning costs. The law defines "ordinary wear and tear" and states the deposit cannot be withheld for damages or cleaning that stem from ordinary wear and tear or are not properly substantiated with documentation via a pre-move-in condition checklist and invoices and receipts.



The pre-move-in condition checklist must include wall paint and coverings, carpeting and other flooring, and furniture and appliances. The deadline to refund the security deposit (and account for any portion withheld) is extended to 30 days after the tenant moves out.

If the landlord fails to meet these requirements, they may be liable for the full deposit amount (or even up to two times the deposit if it's shown the landlord acted intentionally).

## HB 1110

**HB 1110: Increasing Middle Housing in Areas Traditionally Dedicated to Single-Family Detached Housing**

HB 1110 aims to increase the housing supply by allowing construction of so-called "middle housing" (duplexes, triplexes, fourplexes, and townhouses: units falling between single-family homes and large multi-family complexes) in areas zoned as single-family. What development this law now permits in a given area depends on current population size and proximity to a major metropolitan area, but the overall result is that duplexes and fourplexes are legal now in most cities.

## HB 1181

**HB 1181: Improving State's Response to Climate Change by Updating State's Planning Framework**

HB 1181 requires all comprehensive plans to include a component addressing climate change (specifically greenhouse gas emissions).

## HB 1293

**HB 1293: Streamlining Development Regulations**

HB 1293 is intended to reduce development delays and uncertainties (and the accompanying increases in costs) by mandating simpler, clearer design review requirements.

## HB 1337

**HB 1337: Expanding Housing Options by Easing Barriers to the Construction and Use of Accessory Dwelling Units**

HB 1337 requires cities to allow at least two attached or detached accessory dwelling units (ADUs) on residential single-family home lots in urban growth areas. These ADUs may be attached or detached from the main house, up to two stories high, and up to 1,000 square feet. The law also prohibits certain requirements that typically limit ADU construction and use, including those related to owner occupancy, parking, setbacks, and impact fees.

## HB 1009

**HB 1009: Military Spouse Employment**

When a real estate licensee in another state moves to Washington due to their spouse's military deployment/relocation, they may need time to obtain a Washington real estate license. To ease this transition, HB 1009 allows for the issuance of a temporary license to practice real estate as a spouse is in the process of obtaining a permanent Washington license.

## SB 5045

**SB 5045: Incentivizing Rental of Accessory Dwelling Units to Low-Income Households**

SB 5045 encourages the rental of ADUs to low-income households by offering a tax exemption for ADUs. To qualify, an ADU cannot be rented to an immediate family member, its worth can't exceed 30% of the value of the original structure, and the rent charged can't exceed 30% of the tenant's income.

## SB 5058

**SB 5058: Exempting Buildings with Fewer than 12 Units and No More than Two Stories from Definition of Multiunit Residential Buildings**

To bring down the cost of building smaller condominiums, SB 5058 exempts smaller, low-rise buildings (up to two stories and 12 units) from certain design and inspection requirements applicable to larger multiunit developments.

## SB 5258



**SB 5258: Increasing Supply and Affordability of Condo Units and Townhouses as Option for Homeownership**

SB 5258 is aimed at improving condominium and townhouse supply and affordability. To that end, it creates a "Right to Cure" process for contractors to repair condo construction defects before litigation; it also streamlines the development process for smaller condo projects.

## SB 5290

**SB 5290: Concerning Consolidating Local Permit Review Processes**

To help reduce permitting delays, SB 5290 establishes permit review periods and provides resources for local governments to modernize their permitting systems by updating from paper to electronic systems.

## SB 5399

**SB 5399: Future Listing Contracts**

In recent years, a number of states have brought litigation against a company using predatory 40-year exclusive listing agreements. SB 5399 addresses this issue by limiting the duration of these so-called "future listing right purchase contracts" to five years and by making such listing practices subject to the state Consumer Protection Act. The law also prohibits these contracts from being used as liens against property and prohibits them from running with the land.

## SB 5412

**SB 5412: Reducing Local Governments Land Use Permitting Workloads**

SB5412 will speed up the State Environmental Policy Act (SEPA) review process by exempting certain types of developments from SEPA review, including most housing developments.

## Key Terms

**Real Estate Agency Law's Statutory Duties**

The duties of reasonable care and skill, honesty and good faith, presenting all written communications, disclosure of material facts, accounting, providing agency pamphlet, and agency disclosure are owed to all parties in a transaction, and not just to the broker's client.

**Limited Dual Agency**

When the buyer and seller are represented by the same broker or when the buyer and seller are each represented by a broker working for the same firm, this is known as a limited dual agency. The client must consent in writing to a limited dual agency.

**Buyer Representation Agreements**

The real estate agency law now requires buyer's agents to enter into written services agreements with their clients, addressing exclusivity of agency, compensation, and the agency term.

**HB 1070**

This law exempts sale-leaseback transactions from the Residential Landlord-Tenant Act (RLTA) and its eviction and just cause requirements as long as the parties sign a written lease at closing for no longer than three months, the buyer does not accept rent from the seller after three months, the property is not a distressed home, and the seller was represented in the transaction by a licensed Washington attorney or real estate broker.

**HB 1074**

This law clarifies the documentation and processes required when a landlord retains a tenant's security deposit to cover damages or cleaning costs.

# CHAPTER 3: BUSINESS PRACTICES AND PROFESSIONAL STANDARDS

## Chapter Introduction

In the final section of this course, we're going to talk about business practices and professional standards. We'll start by looking at the National Association of REALTORS®' Pathways to Professionalism, which is a series of precepts that should guide real estate agents in their interactions with the public and with each other.

After that, we'll discuss a managing broker's supervisory responsibilities, especially as they relate to managing a branch office or leading a team. We'll describe how agents should act in multiple offer scenarios, where buyers are forced to compete with each other. We'll also describe some common risky real estate practices often seen in active markets.

Then we'll explain why the use of transaction coordinators to help busy agents can be problematic. We'll review some common license law violations by brokers. Finally, we'll discuss safety issues when interacting with members of the public.

## Chapter Overview

After completing this chapter, you should be able to:

- Explain how to raise the bar of professionalism in interactions.
- Identify best practices in an active market.
- List common license law violations by brokers.

## Raising the Bar of Professionalism in Interactions

The most important published guidance for high standards of professionalism is the National Association of REALTORS®' Pathways to Professionalism (https://www.nar.realtor/code-of-ethics-and-arbitration-manual/pathways-to-professionalism). It's a list of 42 suggestions on how to better serve the public in a friendly and helpful way. This list contains a statement that failure to comply with the suggestions isn't a basis for professional disciplinary action, the way that a violation of the Code of Ethics might be.

The list is divided into three sections: "Respect for the Public," "Respect for Property," and "Respect for Peers."

At the top of the list (it's filed under "Respect for the Public" but certainly applies to interaction with fellow licensees as well) is perhaps the most significant and all-purpose one: "Follow the 'Golden Rule': Do unto other as you would have them do unto you."

Other suggestions in this section include: "Respond promptly to inquiries and requests for information," "Schedule appointments and showings as far in advance as possible," and "Communicate with all parties in a timely fashion."

Another suggestion that might not be as readily apparent is "Communicate clearly; don't use jargon or slang that may not be readily understood." Real estate agents, like every other profession, have their own insider language, and it's important to remember that most clients aren't immersed in the profession and may not know terminology that agents routinely use with each other.

The final suggestion is also key, in terms of helping clients feel like they have enough space to make their own decisions: "Do not tell people what you think—tell them what you know."



The "Respect for Property" section is largely focused on a property you are showing: Keep it clean and in the same condition as when you first entered it. It also includes keeping an eye on all persons you bring into the house and keeping the occupant's possessions safe: "When showing property, keep all members of the group together."

One consideration that might not immediately come to mind for agents but can be important for the occupants' peace of mind, is "Respect sellers' instructions about photographing or videotaping their properties' interiors or exteriors." Buyers often want to document what they see so they can re-evaluate their choices later, but it's important to balance that against a seller's right to privacy.

The Pathways to Professionalism also extend to interactions with fellow real estate agents.

Some of the suggestions are basic, like "Respond to other agents' calls, faxes, and e-mails promptly and courteously," and "Notify the listing broker if there appears to be inaccurate information on the listing."

Other suggestions reflect new developments in technology: "Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients."

Or they may reflect not stepping on others' toes in the effort to find more business: "Do not prospect at other REALTORS®' open houses or similar events."

The final recommendation, "Respect for Peers," can be applied more broadly to include anyone you deal with. "Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come."

## Managing Broker Responsibilities

Now we'll talk about a managing broker's responsibilities when running a branch office or a team.

The managing broker's job, at its essence, is to supervise the activities of brokers (and potentially other managing brokers) and ensure all laws are being followed.

One of a managing broker's key duties (under WAC 308-124C-135) is to make sure all real estate brokerage services are performed in accordance with the license law, the state's agency law, and the state Uniform Regulation of Business and Professions Act.

A licensee who exercises supervisory control over licensees must be a managing broker. This is true whether the licensee is a branch manager or is exercising control over one or more licensees who are part of a team.

For brokers with under two years of experience, a managing broker must provide a heightened level of supervision. This, practically speaking, means greater scrutiny of the contracts and other documents that the new broker generates.



The managing broker of an office is responsible for handling that office's funds and records. Brokers should deliver to the managing broker any funds that are to be held by the firm. The managing broker, in turn, should deliver those funds to the designated broker or, more commonly, deposit them in the trust account if the designated broker has delegated that power to the managing broker.

Other responsibilities a managing broker must meet include cooperating with the Department of Licensing in investigations, audits, and licensing matters, and following and enforcing the firm's designated broker's policy on referral of home inspectors.

The managing broker must also follow and enforce rules concerning safe handling of client funds, timely delivery of client funds or property, legal advertising, and modifying or terminating brokerage service contracts on the firm's behalf.

A designated broker can, and usually will, delegate a number of other responsibilities to a managing broker. This might include performing monthly trust account reconciliations and otherwise ensuring accounts are in balance, establishing a policies and procedures manual for handling of funds and property, reviewing contracts and other documents as they are submitted, making sure required records are available to the Director's representatives, and ensuring agents working for the firm are properly licensed.

## Multiple Offer Scenarios

Our next topic is multiple offer scenarios. Here, we'll discuss the use of "love letters" written to sellers, which may seem like a good way for a buyer to gain a competitive edge but are rife with potential problems. We'll describe some other seller and buyer options when facing multiple buyer situations. And we'll talk about best practices for professional cooperation in multiple offer situations.

If you're a listing agent, you have several competing goals. On the one hand, you want to get your client the highest selling price possible. On the other hand, you want the transaction to actually close. A ludicrously good selling price is of no use to sellers or to a listing agent if it can't be backed up with the funds to close the transaction, or if an appraisal is likely to show the property isn't worth anywhere near that much.

So, a listing agent should emphasize to clients that they should evaluate offers based on the buyer's ability to close on terms acceptable to them. This may involve some trade-offs, such as accepting a lower price for a closing that seems more of a sure thing, for instance, because it's an all-cash offer or because they're willing to waive the inspection contingency.

## "Love letters" to Sellers



In especially competitive seller markets, when a listing may get many competing offers, a buyer may sometimes want to give the sellers a "love letter" (or "dear seller letter") with their offer.

A love letter gives the buyers a chance to explain the particular reasons they love and want to buy the seller's home beyond the money and financial terms of the purchase agreement. For example, the buyer may want to let the seller know how much they love the garden, the neighborhood, or some other feature of the property.

But many of these letters inadvertently violate fair housing law. For example, imagine a letter where a potential buyer describes seeing their family singing Christmas carols around the seller's fireplace.

This letter reveals religion and familial status. So, a decision the seller makes favoring this offer due to that information violates the Fair Housing Act and likely state law as well.

People are comfortable with people who are like them. But if a seller bases their choice on that instead of the merits of the offer, it's unfair.

For this reason, Oregon recently made love letters illegal. The National Association of REALTORS® doesn't outright prohibit these letters among its members, but it has taken a fairly strong stand against them, recommending agents inform their clients that the agent won't deliver buyer love letters or make them part of the multiple listing service (MLS) listing.

The DOL can take disciplinary action against a broker complicit in a party's discrimination involving love letters. A broker's license could be suspended or revoked, and they could face a substantial fine for each offense, and/or be required to complete an educational course in civil rights laws and nondiscriminatory real estate practices. Violations of the license law are also punishable as gross misdemeanors.

If there's any question about the content of a real estate love letter, the broker should consult with their designated broker before passing the letter on to the seller.

## Buyer and Seller Considerations

Buyers and sellers have different sets of considerations when approaching a multiple offer scenario.

The National Association of REALTORS® has published guidance about how best to handle these types of situations; it's available at https://www.nar.realtor/code-of-ethics-and-arbitration-manual/part-4-appendix-ix-%E2%80%94-presenting-and-negotiating-multiple-offers.

This document contains suggestions for keeping everyone involved on a friendly and level-headed basis. Let's take a look at some of the specifics.

Let's look at representing the buyer first. In a multiple offer situation, the buyer wants to make their offer as attractive as possible.

We'll begin by noting that the straightforward way to strengthen an offer involving financing is for the buyer to get loan preapproval: Between two otherwise similar offers, a seller will almost always prefer the one from a preapproved buyer.

In a hot market, the buyer might also offer a larger than normal earnest money deposit, provided they can afford to do so. The buyer could also offer a purchase price that would require a loan near or at their maximum loan limit, hoping to seal the deal immediately.

In a related point, before a buyer employs an escalation clause, their broker should explain the risk if the seller uses the offer and escalation clause to start a bidding war between the buyer and other offerors.

The buyer's maximum price must be an amount they are willing and able to pay because the buyer could very well end up paying that price for the property.

Of course, there are other ways to strengthen an offer unrelated to price; for example, a buyer could remove contingencies or shorten the closing period. As the buyer's agent, your job is to ensure the buyer isn't compromising too much. The buyer may be eager to waive the inspection contingency, for example, without realizing they could end up locked into a contract for a home with serious structural problems.

## Representing the Seller

When you represent the seller, your job in a multiple offer situation is to help the seller evaluate the offers and determine which suits the seller's situation best. This doesn't always mean the offer with the highest price; it's important to consider other factors, such as whether the buyer is preapproved, the size of the earnest money deposit, and the type of contingencies.

Obviously, this evaluation process should never involve any discussion of the prospective buyers' race, color, religion, or other protected class characteristics.

A seller lucky enough to have multiple offers on the table has several options. They can accept one of them or reject all of them.

Or instead of flatly rejecting an offer, they can make a counteroffer. The counteroffer can vary the buyer's offer in various ways, typically by changing the financial terms and/or imposing one or more conditions.

Here's an example. Seller Susan wants to ensure the buyer has the funds to close the sale, so she includes the Evidence of Funds Addendum Form 22EF, in her counteroffer. This form gives the buyer a deadline to provide evidence of the funds they intend to use for the purchase. If the deadline isn't met, the seller may terminate the agreement.

Regardless of what type of approach the agent encourages the buyer or seller to take, it is important the agent take a "time is of the essence" approach to presenting offers.

The seller must see all offers, even ones that seem unpromising. The seller should be shown offers as soon as possible, so they don't jump on an offer without knowing that a better one exists.

## Best Practices



A large part of being a real estate agent is working with other agents and firms to negotiate offers, guide clients through closing, and handle problems. A professional and cooperative attitude between agents is in everyone's interest. It ensures a successful transaction and happy clients.

Communication is essential. Agents should respond to communications from other agents in a timely and professional manner, whether it's returning phone calls, replying to texts, or answering emails. Answering questions and addressing issues right away is also the best way to ensure a small problem doesn't become a big one.

Unfortunately, you'll occasionally encounter an agent who is rude, incompetent, short-tempered, or even a bully. No matter how frustrating the other agent is, don't stoop to their level. Always remain professional and reply in a business-like manner.

If the other agent's behavior is affecting your ability to serve your client, speak to your managing broker. Your managing broker can offer advice and intervene with the other agent's managing broker if necessary.

## Risky Practices in an Abundant Market

The seller's market of recent years and the tight supply of houses has created risks and rewards for agents. We'll focus on the risk side and examine steps listing brokers and buyer brokers can take to protect themselves and their firm. We'll start with issues that typically impact listing brokers.

## Offer Instructions

Unscrupulous brokers may be tempted to lie about the existence or terms of competing offers to drive up an offeror's price. Shading the truth about the terms of another buyer's offer or negotiating position violates a licensee's duty to deal with ALL parties honestly and in good faith.

The duty of honesty and good faith is spelled out in RCW 18.235.130, which lists acts and conditions that constitute unprofessional conduct. This includes "Misrepresentation in any aspect of the conduct of the business or profession."

That said, it's not illegal to reveal the terms of bona fide offers, particularly if the sellers instruct the agent to do so. Though some agents may be uneasy about disclosing the terms of an offer to third parties, they must follow lawful instructions from their clients. These instructions should be made in writing and signed or otherwise identifiable.

Buyers who don't want their offers used to negotiate with other buyers might make it a condition of their offer that the seller not disclose it to third parties. This tactic is probably limited to unique properties or very high-end properties. Currently, sellers have too much power in most markets for buyers to impose unusual conditions.

A seller's instructions can't be used by the broker to filter offers. Listing agents have a duty to promptly present all offers unless they have a seller-signed letter stating that no other offers will be accepted.

The seller's instructions are not the broker's to tailor; they must be followed carefully. The Department of Licensing calls this a "bright line rule" (hard and fast rule).

## Review Date for Offers in the Future

As you know, the general rule is that offers must be presented to the seller immediately upon receipt.

Given today's use of electronic communications, "timely" presentation likely means delivering the offer to the seller the day it's received by the listing broker. This is another bright line rule.

However, there is an exception to the immediate delivery rule. In a multiple offer market, most sellers have their broker hold all offers until a future date when all offers will be reviewed at once. This approach should be the seller's idea, or at least the seller should be behind it, as indicated by the seller signing the MLS data sheet where this plan is stated.

What if a seller wants to accept an offer earlier than the stated date for reviewing offers? What advice can you give the seller? The NWMLS Listing Input Sheet offers two checkboxes regarding offer review. The second box, for setting a review date, states the seller retains the right to accept offers earlier than the review date. In other words, the checkbox is not a contractual promise to some as yet unknown potential buyer.

Similarly, checking the first box doesn't mean the seller can't later decide to set a review date after all.

Nevertheless, some buyer hopefuls will be upset if a seller suddenly switches over to a group review date and the buyer now has to wait for a response to their offer. In reaction, the buyer might withdraw what might have been the best offer. So, there is still some risk to the seller.

## Misleading Photos in Listings

Another area where listing brokers may be tempted to mislead is the use of photos in advertising a property. Camera and photo editing software allows easy manipulation of images. Adding a pleasing blue sky is one thing. Adding grass that isn't there or editing out power lines or other property flaws is misleading and violates the license law in a way that is easy to prove.

## Risky Buyer Concessions in Active Market

We'll switch to discussing the risk of certain concessions buyers may be tempted to offer sellers in this hyper-competitive market, including:

- waiving inspections,
- striking the Information Verification paragraph from the purchase and sale agreement,
- releasing earnest money to the seller on mutual acceptance, and
- waiving the right to receive the Seller Disclosure Statement.

## Waiving Inspections



In the current hyper-competitive market, waiving the inspection contingency is no longer the rarity it once was. The risk is obvious. The buyer could end up with a "lemon." That risk may strike a buyer as better than no house at all however.

Of course, there are degrees of waiver. The least risky form is to keep the contingency but waive the right to repairs below a certain dollar amount. For example, the buyer might promise not to request repairs for anything under $1,000. This way the seller won't feel there's a risk of getting nibbled at over repairs.

Still, a dollar limit on repairs may not be enough to win a bidding war. The next level is to waive the contingency altogether. Experts caution not to waive the right to an inspection entirely however. Rather, the buyer can require an inspection "for information only."

With an "information only" inspection right, if the inspection reveals something major (for example, a need to completely overhaul the plumbing), the buyers can still back out although they will lose their earnest money deposit. The risk is at least capped at a known dollar amount.

## Seller Pre-inspections

Some sellers, especially those who set an offer review date, order an inspection before putting their house on the market. These pre-inspections may be done because the seller is fully confident about the condition of the house.

Or the opposite may be true: The seller wants to reveal what the repair problems are but make clear that those issues have already been factored into the asking price. The goal is to eliminate negotiations about repairs.

NWMLS Form 35P is used to arrange a pre-inspection. The buyer must arrange and pay for any pre-inspections, and the buyer cannot give the seller any portion of the inspection report without the seller's written request.

The main concern with pre-inspections from the buyer's perspective is the pre-inspection doesn't eliminate the need for the buyer's own inspection. For one thing, an inspection can be a form of insurance: if the inspector misses something, the inspector may be liable. The buyer may not have that right with the seller's inspector.

Suing an inspector is a long shot, though, and many inspection contracts limit liability to the price of the inspection. In addition, the need for a buyer's own inspection arises when the seller claims to have had issues fixed. The buyer needs to confirm this with an inspection.

## Buyer Pre-inspections

Cautious buyers may like the idea of having their own pre-inspection done if the seller hasn't had one performed. The inspection report can help the buyers shape their offer or rule out a property.

However, buyer pre-inspections don't play much role with high-demand properties. Many sellers dislike the hassle of making their property available to buyers who haven't made an offer. And practically speaking, it's hard to hire an inspector and get the inspection done in the short time that high-demand properties are on the market these days.

## Striking the "Information Verification" Paragraph

The NWMLS purchase and sale agreement (Form 21) contains this paragraph:

> **w. Information Verification Period**. Unless satisfied/waived, Buyer shall have the time period set forth in Specific Term No. 15 (10 days after mutual acceptance if not filled in) to verify all information provided from Seller or Listing Brokerage Firm related to the Property. This contingency shall be deemed satisfied unless Buyer gives notice identifying the materially inaccurate information within the time period set forth in Specific Term No. 15. If Buyer gives timely notice under this section, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

As you see, the information verification provision gives the buyer ten days to verify information provided by the seller, basically, the information on the Seller Disclosure Statement (NWMLS Form 17). If the buyer finds "materially inaccurate information" within this ten-day period, the buyer can back out.

Some buyers delete this provision because the verification period gives the buyer something of an "out" from the transaction. Buyers who delete the provision believe doing so makes their offer cleaner and more appealing to sellers. Some sellers may prefer offers without this provision.

But experts caution that the information verification period protects the seller. Usually, the ten-day period passes without an issue. If so, and the buyer moves in and later discovers an issue with the property, the information verification provision blocks the buyer from suing. The buyer had a chance to perform due diligence and failed to do so. That is why the provision was added to the form: to eliminate post-closing lawsuits.

Sellers are better off leaving the provision as-is. Washington court decisions, chiefly the well-known case *Douglas v. Visser*, suggest this verification provision is a strong defense against claims the seller failed to disclose something. That is true even if the seller acted fraudulently.

If the buyer keeps the provision and then subsequently decides to terminate the agreement based on materially inaccurate information, they would use the Notice of Termination (Information Verification Period) (NWMLS Form 90Z), to notify the seller of this decision.

## Earnest Money Release

Another way some buyers make their offers more attractive is by modifying the purchase agreement to state the earnest money will be released to the seller as soon as mutual acceptance occurs.




Unlike deleting the information verification provision, changing the purchase agreement form to allow immediate release of the earnest money may benefit sellers and certainly doesn't harm them.

Thus, sellers are likely to consider immediate release a plus for the offer. However, the buyer is taking on significant risk traditionally placed on the seller.

Why does immediate release benefit sellers? In theory, it shouldn't matter. If the buyer defaults, the seller should get the earnest money. But buyers often dispute they are in default. If so, the seller's efforts to collect the earnest money are often difficult and expensive.

Immediate release of the earnest money switches the difficulty in collecting to the buyer if there's a dispute about who owns the funds. Buyers should receive legal advice before modifying their offer to grant immediate funds release.

Also, the buyer's broker should consult their managing broker. Some authorities have speculated buyers facing loss of their earnest money through no fault of their own might claim they were poorly advised and seek reimbursement from their brokerage.

## Buyer Waiving Right to Seller Disclosure Statement



We'll conclude this section by discussing one other possible buyer concession to the seller: waiving the right to receive the Seller Disclosure Statement Form 17. As you can see, the buyer has two choices regarding waiver. In the first option, the buyer can waive the three-day right to revoke an offer based on the disclosures. This isn't too controversial because the buyer who enters into an agreement still has a chance to back out after reading the statement.

**2. BUYER'S WAIVER OF RIGHT TO REVOKE OFFER**
Buyer has read and reviewed the Seller's responses to this Seller Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer based on this disclosure.

Buyer _____ Date _____ Buyer _____ Date _____

**3. BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED SELLER DISCLOSURE STATEMENT**
Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement. Buyer waives that right. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," Buyer may not waive the receipt of the "Environmental" section of the Seller Disclosure Statement.

Buyer _____ Date _____ Buyer _____ Date _____

The second option is a more significant concession to the seller and, like the other concessions we've mentioned, must be approached with caution. It's true that the buyer can never waive the right to receive disclosure of environmental problems with the property, so waiving Form 17 doesn't mean a buyer will be kept in the dark about potential environmental hazards.

Arguably, waiving Form 17 generally poses less risk than it appears. Given the *Visser* case mentioned earlier, it's clear that in Washington a buyer should rely on the buyer's own inspection and not depend on disclosures from the seller.

Washington courts are reluctant to penalize a seller for failing to disclose defects on Form 17. That said, buyers can't expect legal advice from their agent on waiving the disclosure statement; they need to consult an attorney.

## Transaction Coordinators

Now we're going to discuss the use of transaction coordinators. Recent years have seen a significant uptick in the practice of using transaction coordinators, who may or may not be real estate licensees, to facilitate transactions. This most commonly occurs when a broker is listing or selling a property outside of their local area.

Some transaction coordinators are employed in-house, meaning they hold a real estate license *and* are licensed to the broker for whom they are providing services. This arrangement is perfectly legal.

But if a transaction coordinator isn't a real estate licensee, licensed to that broker whose transactions they are handling, the coordinator cannot provide any real estate services. To do so would violate agency law and the license law. That's because the client's agency agreement is with the broker, not with the transaction coordinator.

Additionally, because the transaction coordinator hasn't signed an agency agreement with the client, as soon as they start providing real estate services, they (and the broker they are licensed to) automatically become agents of the OTHER party in the transaction.

The solution is to either only use in-house transaction coordinators or have a contract with the outside transaction coordinator stating they will not provide real estate services and their compensation will not depend on the transaction's successful closing.

## Most Common Violations by Brokers

The real estate license law and general agency law impose a number of specific duties on real estate brokers. Failing to comply with any of these duties opens you up to possible complaints by clients, customers, and other brokers, potentially resulting in fines or even license suspension or revocation.

We'll look at several common causes of consumer complaints to (and investigations by) the Department of Licensing: issues with recordkeeping, trust accounts, broker responsibilities, advertising, failure to cooperate with DOL investigations, and unlicensed activity.

## Recordkeeping

Designated brokers have custody of all firm records and are responsible for their accuracy even if the records are prepared or maintained by another broker or unlicensed assistant. All required records must be kept accurate and up-to-date and must be available at all times to Department of Licensing auditors.

You must maintain various records, including:

- all documents related to any transaction (sale or lease),
- trust fund documents, and
- and a log of all affiliated licensees' agreements and contracts for brokerage services.

The designated broker must maintain transaction folders for each transaction as part of the brokerage's permanent records. All agreements, contracts, documents, and correspondence related to a transaction must be kept in that transaction's folder, including the:

- listing agreement,
- purchase and sale agreement,
- lease or rental agreement,
- modifications or addenda to those agreements,
- settlement statement, and
- other agreements or documents relevant to the transaction.

All correspondence associated with the transaction must be in the folder: letters, emails, and other forms of written communication. If your clients communicate with you via your website or social networking webpage, you should keep copies of these communications as well.

You may also want to keep a wider variety of records than the law requires. It's a good idea to keep any piece of paper, even informal notes, related to a transaction. Many licensees maintain phone logs where they track the time and topic of phone calls.

## Trust Accounts

Along with transaction records, the brokerage must also maintain detailed records concerning every trust account under its control. Remember that a firm's trust account should be opened in the name of the firm as licensed, in a recognized financial institution in Washington, and must be specifically designated a trust account.

Only trust funds may be maintained in a trust account with one exception: The firm is allowed to deposit a "minimal amount" of its own funds to open the account or to maintain a minimum balance to keep the account open. A firm may not pay its own business expenses directly out of a trust account.

For sales transactions, you should keep trust account records in the same location as the transaction folder.

Mandatory records include:

- a duplicate receipt book or cash receipts journal that contains all receipts,
- prenumbered checks along with a check register, cash disbursement journal, or check stubs,
- validated duplicate bank deposit slips,
- a client's accounting ledger that summarizes all money received and disbursed for each transaction, each property management account, or each contract or mortgage collection account,
- separate ledger sheets for each tenant, lessee, vendee, or mortgagor,
- reconciled bank statements, and
- canceled checks, including voided checks.

## Broker Responsibilities

A firm's designated broker has the final authority and responsibility for all of the firm's activities. This includes ensuring all legal requirements are met in terms of recordkeeping, handling trust funds, supervision of affiliated licensees, and other operational issues.

A designated broker may delegate some of this authority to another managing broker or branch manager, including the duties of:

- safe handling of client funds,
- maintenance of trust accounts, transaction records, and trust account records, and
- supervision of brokers.

But the delegation of authority must only be to managing brokers licensed to the firm and must be in a written and signed delegation agreement. The designated broker must keep a record of any delegations they make.

The other broker cannot take on any of the designated broker's duties and tasks outside of the scope of this delegation. And remember that the broker remains ultimately responsible for delegated tasks. So, even if the broker has delegated recordkeeping duties to someone else, the broker remains responsible for the custody and accuracy of the required records.

## Advertising

Any advertising by a real estate licensee must contain the firm's name as licensed, or an assumed name that has been approved by the Department of Licensing. Any ad without the firm's name, known as a blind ad, is a violation of the license law. This is true regardless of what media format the ad appears in.

The requirement that the firm's name must appear in advertising applies even when a broker has his own company, with its own name, under the firm's larger umbrella.

For instance, suppose broker Matt is employed by the firm Great Western Real Estate in their Littlefield branch office. With the permission of Great Western's designated broker, Matt sets up his own limited liability company, Littlefield Team. He intends to emphasize local listings, and he hires several unlicensed assistants to help him.

The name Littlefield Team can appear in Matt's advertisements but so too must the name Great Western Real Estate. That is the firm that Matt's listings ultimately belong to, and that is ultimately responsible for Matt's actions. If Matt fails to include the brokerage name in his ads, he is violating the real estate license law.

Facebook, Twitter (now known as X), and other social media advertising are subject to the same guidelines that the Real Estate Commission has developed for all advertising on the internet. In short, a licensee must be sure to fully disclose their licensed status in all internet communications.

Full disclosure requirements include:

- the licensee's name, the name of the firm with which the licensee is affiliated, the city and state in which the licensee's office is located, and the states in which the licensee holds a real estate license; and
- the firm's name as registered with the Department of Licensing, the city and state in which the firm is located, and the states in which the firm is licensed.

That may seem cumbersome—particularly in the context of Twitter, where disclosing all of that information would far exceed the medium's character limit. However, the Commission's guidelines include suggestions on how to meet disclosure requirements in various different types of internet communications.




Most notably, their advice concerning posting on "Websites" (which should include Facebook and Twitter) is that each viewable page should include a link (via a single click) to a full disclosure. This is the "one click away rule." Although Facebook posts and Twitter "tweets" are by nature very short, the problem can be solved with a clickable link to another online page containing that disclosure. A URL shortener can be used to generate a link that takes up as few characters as possible.

If a licensee advertises on Facebook, the same rule applies as with the use of banner ads on other websites: Each ad should link, via a single click, to a website with a full disclosure. Alternatively, the banner ad itself may include a full disclosure.

When sending an e-mail, or posting to a newsgroup or bulletin board, each message sent by a licensee should include the full disclosure at the beginning or end of the message. The disclosure isn't required if the licensee is repeatedly communicating with one member of the public and the initial communication contained a full disclosure.

One more point regarding disclosure requirements: the firm must keep the Department updated regarding its address. If the location of a firm's office changes, the designated broker must submit a change of address application to the Director within ten days after the move.

## Failure to Cooperate with the Department

Remember that failure to cooperate with the Director of the Department of Licensing in the course of an investigation, audit, or inspection is considered unprofessional conduct and is grounds for disciplinary action.

## Unlicensed Assistants

Successful, busy agents commonly employ assistants. Assistants can increase agent productivity by assisting with paperwork, recordkeeping, and other mundane tasks, giving agents more time to seek out and work directly with clients.

However, if an assistant is unlicensed, the real estate agent must be careful not to assign any tasks requiring a real estate license. If the agent assigns such a task or if a failure to adequately supervise the assistant leads to the assistant performing unlawful tasks, the agent will have violated both the real estate license law and the Uniform Regulation of Business and Professions Act (URBPA). The agent is then at risk for disciplinary action by the Department of Licensing.

The state's license law does not directly address the question of what an unlicensed assistant may or may not do. However, the statute does have a list of "real estate brokerage services" that require licensure (RCW 18.85.011). In other words, the activities on this list may not be performed by an unlicensed assistant; conversely, activities not on the list are fair game for unlicensed assistants.

These "real estate brokerage activities" are:

- listing, selling, purchasing, exchanging, optioning, leasing, or renting any interest in real estate,
- negotiating or offering to negotiate a real estate transaction,
- listing, selling, or negotiating a transaction involving a manufactured or mobile home, where the transaction also involves the land on which the mobile home is located,

- advertising oneself as being engaged in real estate brokerage services,
- advising, counseling, or consulting with parties to a real estate transaction,
- issuing a broker's price opinion, i.e., a competitive market analysis (CMA),
- collecting, holding, or disbursing funds in connection with a real estate transaction, and
- performing property management services.

This list raises as many questions as it answers though; many activities that a real estate assistant might perform fall into gray areas. For instance, if an assistant is present at an open house and is asked by visitors about a house's age and square footage, could the assistant answer? Or would that be considered counseling or consulting with prospective buyers? That's not readily clear from the statute.

Fortunately, the Commission has provided additional guidance regarding what unlicensed assistants can and cannot do. The list is not exhaustive, but it does provide clear contrasts between lawful and unlawful activities in many cases.

For instance, an unlicensed employee can provide information about real estate characteristics or the terms of a transaction but only as written and approved by a licensee. In the example we gave, the assistant could give information, if asked, about a house's age and square footage but only if the licensee has provided that information in written form to the assistant (such as on a flyer, given to the assistant to distribute).

Along those lines, an unlicensed assistant may greet people at an open house, distribute pre-printed materials, and provide security at the open house. The assistant may also transport people to properties or around neighborhoods of interest. However, in performing these activities, they may not "show" a property, answer any questions, or interpret any information about a property's price or condition beyond what a licensee has put into writing.

An unlicensed assistant may perform normal clerical duties, including phone screening and appointment scheduling. However, there are restrictions on an unlicensed assistant's ability to phone prospective clients.

An unlicensed person may cold call potential clients on a licensee's behalf only if their compensation does not depend on whether the prospect becomes a client and only if the unlicensed person does not perform any brokerage services.

An unlicensed assistant may perform typing tasks and perform courier-type tasks like picking up and delivering documents. They may also follow up with lenders on loan commitments and deliver or receive loan documents after a contract has been negotiated.

But the assistant can't fill out any legal documents, and under no circumstances may an unlicensed assistant ever negotiate the price or any other contract terms.

An unlicensed assistant may gather market analysis information to help a licensee complete a competitive market analysis (CMA). They may also gather any public information (such as from government offices, utility companies, or title companies). But they may only gather and not interpret any of the information about title, financing, contracts, or closing.

Other tasks that an unlicensed assistant may perform include writing and placing advertisements and submitting forms or changes to a multiple listing service. A licensee must approve what an assistant writes before its submission to the MLS.

An assistant may also perform physical tasks related to listings, such as installing lockboxes or placing signs on a property.

In the property management context, an unlicensed assistant can perform tasks, such as collecting rents, receiving and recording security deposits, and ordering or performing maintenance or repair work. This would contrast with, say, negotiating the terms of a lease, a task which only a licensee could perform.

## Broker Personal Safety

Finally, we're going to conclude this course with a brief discussion of agent safety. Real estate agents should always keep in mind the safety of their clients, customers, and their clients' possessions.

Agents should advise sellers to remove or secure valuables before showing a house. During an open house or showing, agents should avoid leaving prospects unattended and keep an eye out for other suspicious behavior. Agents should also ensure keys are safely returned to the keybox afterward, and that the door and the keybox are locked.

Real estate agents must also be concerned about their own safety. Violence against real estate agents is rare, but it does happen occasionally. Agents come into contact with many strangers, often in empty houses, so they need to take sensible precautions.

Ideally, when hosting open houses or showing property, agents should work in pairs. If that isn't possible, ask a new prospect to meet you at your office and proceed to the showing from there. That reduces the danger of meeting a stranger at an empty house. It's also a good idea to ask for photo ID when meeting a prospect for the first time.

Legitimate prospects are generally willing to abide by an agent's safety rules. A buyer who insists on meeting an agent at a property or who "cannot" leave a number or address where they can be reached is a bad risk.

Agents should be frank about safety concerns. It's worthwhile to point out to prospective buyers that meeting a stranger (the agent) at an empty house is also risky for them. Most people will readily to meet at the agent's office (or another safe public place) when they understand it's in everybody's best interests.

Agents showing properties should tell their office where they're going and when they're likely to return. They can also arrange to check in with someone by cell phone on a regular basis. Agents who are especially concerned might want to ask the local police department for training or advice about protecting personal safety.

## Key Terms

**Pathways to Professionalism**

The National Association of REALTORS® has established a list of suggestions (that do not rise to the same level as their Code of Ethics) oriented toward smooth and pleasant interactions with clients and with fellow licensees.

**Managing Broker Responsibilities**

Managing broker responsibilities, whether running a branch office or a team, involve supervision of brokers, reviewing documents and contracts, and making sure that records are kept properly.

**Multiple Offer Scenarios**

One way to getting best results out of a multiple offer scenario is to encourage the sellers to evaluate offers based on a buyer's ability to close on terms acceptable to the seller and not simply focusing on which offer is for the highest price.

**Love Letters**

Love letters give buyers a chance to explain the reasons why they especially like a seller's house but also create the risk of fair housing law violations.

**Delegation of Authority**

A designated broker may delegate authority for specific activities, such as safe handling of client funds, maintenance of accounts and records, and supervision of brokers to another managing broker. This delegation of authority must be in writing and signed.

**Advertising**

Advertising must include the firm's name as licensed. Advertising on the internet, including on Facebook and Twitter, and other social media, is subject to additional requirements (for example, it must include the licensee's name and office location).

**Unlicensed Assistants**

If a real estate licensee delegates a task requiring a license to an unlicensed person, this is a violation of the real estate license law and the Uniform Regulation of Business and Professions Act (URBPA).

**Legal Activities**

An unlicensed assistant may greet people at open houses, distribute pre-printed materials, perform clerical duties and courier tasks, and gather public and market analysis information. The assistant may also write and place advertising and MLS information with the licensee's approval.

**Illegal Activities**

An unlicensed assistant may not interpret information about a property, may not fill out legal documents, and may not negotiate a sales price or other contract terms.

**Broker Personal Safety**

Brokers should have safety systems and plans in place for sellers and open houses and for showing vacant properties and handling listing appointments.