**Current Issues in Washington**

**Residential Real Estate**

**By Sabrina Jones-Schroeder, J.D.**

This is a three-hour course focusing on form updates, legislative updates, business practices updates and professional standards.

This class will fulfill the Washington Department of Licensing

mandatory core curriculum for 2024-25.

**Course # C23035712**

**About the Author/Instructor**

**Sabrina Jones-Schroeder, J.D.**

Sabrina is the Designated Broker and owner of EXIT Real Estate Professionals in Spokane, Washington, providing real estate services to the greater Spokane area.

As the Designated Broker, Sabrina created a 16-course training program for new brokers covering the many aspects of a real estate career. Sabrina has taught for Spokane and Washington REALTORS® since 1997.

Sabrina graduated Magna Cum Laude from Gonzaga University in 1992 with Bachelor of Arts Degrees in Political Science and Spanish and a concentration in Women’s Studies (during which time she began her real estate career). She graduated Cum Laude from Gonzaga University School of Law in 1995 and was admitted to the Washington Bar Association after passing the Washington bar exam in 1995.

Even after 30+ years in the industry, Sabrina still has enthusiasm and passion for all aspects of her real estate career. She started in the business in 1990 (less a three-year sabbatical to attend law school) and has spent time as an active listing and selling broker, as well as in sales associate recruiting, retention, management and training.

Sabrina is married to Jeff who owns a home inspection company in Spokane and they have two wonderful children – Emerson and Cole. They love to snow ski at their home away from home at Schweitzer Mountain, mountain bike, hike, travel, go “glamping” in their fifth wheel named “Lola”, binge watch Netflix shows and just spend time together hanging out.

Sabrina is a knowledgeable and energetic (and often entertaining) speaker with a lot of valuable information and experience to share.

**Curriculum and Learning Objectives**

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**TOPIC AREA I: FORMS REVIEW AND UPDATES (1 hour)**

Identify and discuss the forms that are currently used by licensees in the field, emphasizing purposes, standards of practice, and pitfalls. Specifically, the learner will know and be able to effectively utilize the following forms in a residential real estate transaction where appropriate:

#### A. Evidence of Funds

Students will gain competency in using an Evidence of Funds form (Form 22EF) which should be required on all offers to identify source of funds to close including “non-contingent funds”, i.e., cash on hand and more especially “contingent funds”, e.g., stock or withdrawal from retirement funds, gifts, etc.

**B. Inspection Addenda**

Students will receive information regarding the overall function of the inspection addenda and important revisions to the Inspection Contingency Addendum – Form 35 in particular such as Buyer can request additional inspections prior to the negotiated timeline to finalize their inspection response, as well as ancillary inspection issues (e.g., sewer, well and septic) including use of the following forms:

1. Pre-Inspection Agreement – Form 35P
2. Inspection Addendum to Purchase and Sale Agreement – Form 35
3. Inspection Waiver Addendum to Purchase and Sale Agreement – Form 35W
4. Seller Request Inspection Report – Form 35C
5. Well Addendum to Purchase and Sale Agreement – Form 22R
6. Septic Addendum to Purchase and Sale Agreement – Form 22S
7. Sewer Inspection Addendum to Purchase and Sale Agreement – Form 22SI

**C. Inspection Response**

Students will understand how to use the inspection response forms (Form 35R & 22RN) to navigate the inspection and well contingencies including buyer’s notice to the seller, seller’s response to the buyer’s notice and the buyer’s reply to the seller’s response.

**D. Broker Compensation**

Students will understand how to explain compensation to sellers and buyers through the use of the following forms:

1. Listing Agreements including the Exclusive Sale and Listing Agreements (Form 1A for NWMLS and Form 1A-SWF for other MLS’s throughout the state) as well as Form 18 – Amendment to Exclusive Listing Agreement
2. Buyer Brokerage Compensation Agreements such as the Form 41 – Buyer Brokerage Services Agreement and the 41A – Amendment to Buyer Brokerage Services Agreement
3. Compensation Disbursement Forms such as in the Form 21 – Purchase and Sale Agreement and the Form 41C – Buyer Brokerage Firm’s Compensation Agreement

**E. New Forms Effective in 2023**

Students will learn about the new forms that were introduced into the statewide forms system in 2023 including:

1. Form 90Z - Notice of Termination (Information Verification Period)
2. Form 22AN - Notice of Low Appraisal
3. Form 22AWO – Notice of Appraisal Work Order
4. Form 39N – Notice to Second Buyer

**E. Early or Delayed Occupancy**

Students will understand how to explain the benefits and pitfalls of early and delayed possession through the use of the following forms:

1. Form 65A – Rental Agreement (Buyer Occupancy Prior to Closing)
2. Form 65B – Rental Agreement (Seller Occupancy After Closing)

**F. Agency Law Pamphlet**

Students will receive information regarding the updates to the mandatory Agency Law

pamphlet effective January 1, 2024 under the revised Agency Law – RCW 18.86.120 called the Real Estate Brokerage in Washington pamphlet (Form P1).

**G. Earnest Money**

Students will gain competency in advising clients on the following earnest money issues:

1. Forfeiture of earnest money vs. election of remedies
2. Late delivery – what it means and should the parties sign an addendum
3. What the PSA says about earnest money when one party is in default
4. How much earnest money can be forfeited?
5. Interpleader action: what it is and how does it work?
6. Earnest money released to the seller should be deposited into escrow and not released to the seller

**TOPIC AREA II: LEGISLATIVE UPDATE (.5 hours)**

Upon completion of this unit, the learner will know, be able to identify and describe updates to:

#### A. Reform to the Law of Real Estate Agency Effective January 1, 2024

1. SSB 5191: This law requires written brokerage services agreements, improved consumer disclosure and provides that certain legal duties of broker apply to all parties in the transaction. The amendments to the agency law will:

a. Create a default buyer agency term of 60 days, but allow a buyer and

broker to agree to a different length of term in writing

b. Clarifies the difference between “exclusive” and “non-exclusive” for

consumers

c. Address issues in disclosure and agency relationships

**B. Review the most recent legislation and the effect that it has on the daily practice of**

**real estate activities including the following:**

1. HB 1042: Concerning the use of existing buildings for residential purposes

2. HB 1046: Expanding housing supply by supporting the ability of public housing authorities to finance affordable housing developments by re-benchmarking area median income limits

3. HB 1070: Exempting the sale and leaseback of property by a seller from the Residential Landlord-Tenant Act (RLTA) when the seller agrees to written lease at closing

4. HB 1074: Addressing documentation and processes governing landlord’s claim for damage to residential premises

5. HB 1110: Increasing middle housing in areas traditionally dedicated to single-family detached housing

6. HB 1181: Improving the state’s response to climate change by updating the state’s planning framework

7. HB 1293: Streamlining development regulations

8. HB 1337: Expanding housing options by easing barriers to the construction and use of accessory dwelling units (ADUs)

9. 2SHB 1009: Addressing military spouse employment

10. SB 5045: Incentivizing rental of accessory dwelling units to low-income households

11. SB 5058: Exempting buildings with 12 or fewer units that have no more than two stories from the definition of multi-unit residential building

12. SB 5258: Increasing the supply and affordability of condominium units and townhouses as an option for homeownership

13. SB 5290: Concerning consolidating local permit review processes.

14. SB 5399: Regarding future listing contracts

15. SB 5412: Reducing local government’s land use permitting workloads

**TOPIC AREA III: BUSINESS PRACTICES UPDATE AND PROFESSIONAL STANDARDS (1.3 hours)**

Upon completion of this unit, the learner will know and be able to understanding the basics of best business practices and professional standards**.** Specifically, the learner will know, be able to identify and describe:

#### Raising the bar of professionalism in interactions

#### Managing Broker responsibilities with regard to managing a firm or branch office or as a team leader:

* + 1. Role and responsibilities of designated broker
    2. Enhanced supervision of new licensees with less than two years of experience

#### Multiple Offer Scenarios– Students will understand:

1. How to evaluate offers based on a Buyer’s ability to close on terms acceptable to Seller

2. How to avoid evaluating offers based on discriminatory information or protected classes

3. Seller and Buyer options when facing multiple offer situations

4. Time is of the essence when presenting offers

5. Best practices in multiple offer situations

1. **Risky practices in an abundant market.**
   * 1. From listing brokers:

Falsifying information about competing offers

Offer instructions – are they broker or seller instructions?

Review date for offers in the future

Misleading photos in the listing

Bright line rules:

Present all offers received to the sellers

Present all offers timely (the day the offer is received)

Every action taken is the seller’s choice

From buyer brokers:

Dangerous inspection scenarios

Earnest money to be released to the seller upon mutual acceptance

Buyer waiving the right to receive the Seller Disclosure Statement (Form 17)

1. **Transaction Coordinators**

Students will understand the issues surrounding the use of transaction coordinators in

their practice of real estate.

1. **Review the top violations by brokers and discuss the infraction and the applicable**

**laws and regulations:** Students will understand the top violations found by the Department of Licensing and the laws and regulations that are applicable including:

1. Recordkeeping

a. Failure to retain all required items

b. Not meeting standards of storage (for privacy or security)

c. Lack of accessibility

2. Trust accounts, specifically, failure to set up or maintain properly

3. Broker responsibilities

a. Lack of proper delegation

b. Conducting duties outside of scope (where delegation is not permitted)

4. Advertising

a. Individuals, teams, or branches not doing business as licensed by the Department

b. Missing information on materials (signage, website, etc.)

c. Failure to update information such as address with the Department

5. Failure to cooperate with the Department (investigations)

6. Unlicensed activity

**G. Broker Personal Safety**

Students will understand common safety practices when showing homes and

conducting open houses and the importance of implementing them in their daily

practice of real estate.

**TOPIC AREA I: FORMS UPDATES**

### Educational Objective 1: Forms Review and Updates

#### A. Form 22EF - Evidence of Funds (Appendix A)

What are the two uses for Form 22EF – Evidence of Funds Addendum to the PSA?

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Paragraph # \_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Paragraph # \_\_\_\_\_

What would be considered evidence of non-contingent funds? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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What happens if the Buyer does not give proof of non-contingent funds within the required timeline (three days unless negotiated otherwise)? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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What happens if the Buyer does not receive the contingent funds prior to closing? \_\_\_\_\_\_\_\_\_\_

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**B. Inspection Addenda to PSA**

In the inspection addenda, the agreement is conditioned upon the Buyer’s inspections of various aspects of the property. Licensees should be familiar with the following inspection forms:

**Pre-Inspection Agreement – Form 35P (Appendix B)**

**Inspection Addendum to Purchase and Sale Agreement – Form 35 (Appendix C)**

**Inspection Waiver Addendum to Purchase and Sale Agreement – Form 35W (Appendix D)**

**Seller Request Inspection Report – Form 35C (Appendix E)**

**Well Addendum to Purchase and Sale Agreement – Form 22R (Appendix F)**

**Septic Addendum to Purchase and Sale Agreement – Form 22S (Appendix G)**

**Sewer Inspection Addendum to Purchase and Sale Agreement – Form 22SI (Appendix H)**

With regard to the **Inspection Contingency – Form 35 (Appendix C)** who are the two kinds of people that can perform the general home inspection?

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Buyer may engage specialists such as plumbers, electricians, roofers, etc. to conduct **further** inspections of the property if desired before the expiration of the initial inspection period or invoke their additional inspections period if needed.

Buyer and Seller will negotiate up front whether Buyer may or may not have sewer system scoped.

Buyer’s obligations under the inspection contingency are as follows:

1) order the inspection(s)

2) choose the inspector (Buyer is solely responsible for interviewing and choosing this person)

3) pay for the inspection(s)

**The Buyer shall not provide the inspection report or portions of the report to the Seller unless Seller requests otherwise.** Strong penalty if the buyer provides the report: waiver of the inspection contingency altogether! Seller may consent to receiving the report (or portions of the report) after mutual acceptance by signing the **Seller Request Inspection Report – Form 35C (Appendix E).**

Buyer may also make their agreement contingent upon inspection of the well and septic with the use of the **Well Addendum to Purchase and Sale Agreement – Form 22R (Appendix F)** and the **Septic Addendum to Purchase and Sale Agreement – Form 22S (Appendix G)** and in July, 2023, the **Sewer Inspection Addendum to Purchase and Sale Agreement – Form 22SI (Appendix H)** was added to the statewide forms system as a stand-alone sewer inspection addendum (e.g., if the buyer is waiving the general home inspection with a **Inspection Waiver Addendum to Purchase and Sale Agreement – Form 35W (Appendix D)**, but still wants to inspect the sewer system). Note: some argue the use of Form 22 L & A – Land & Acreage Addendum is preferable to the use of 22R – Well Addendum and 22S – Septic Addendum.

**C. Inspection Response**

Licensees should be familiar with the use of the two main inspection response forms:

* + 1. **Inspection Response for Form 35 – Form 35R (Appendix I)**
    2. **Well Inspection Response for Form 22R – Form 22RN (Appendix J)** - added to the statewide forms system in July, 2023

Tennis Match Inspection Contingency: Buyer has 4 options upon the end of the negotiated inspection period (Buyer’s Notice) which is 10 days unless negotiated otherwise:

1. Approve the inspection and waive the contingency,

2. Disapprove the inspection and terminate the agreement,

3. Request further inspections (really, time) in which case the inspection period will be

extended by the negotiated time period and shall commence on the day after the notice

of additional inspection(s) is given, or

4. Propose corrections or modifications to the agreement.

If the Buyer fails to give any notice at the end of the inspection time period, the contingency is deemed waived.

Seller must give notice within the negotiated time period and has 4 options upon receipt of a notice for corrections or modifications from the Buyer (Seller’s Response) which is 3 days unless negotiated otherwise:

1. Agree to the corrections or modifications at which time the contingency is now satisfied,

2. Agree to some of the corrections or modifications,

3. Reject all corrections or modifications, or

4. Offer different or additional corrections or modifications.

Buyer shall have the negotiated time period to reply to the Seller’s response to their request for corrections or modifications (assuming the Seller did not agree to the proposed corrections and modifications). In this, the Buyer’s Reply within 3 days unless otherwise negotiated, Buyer shall have 3 options:

1. Accept the Seller’s response at which time the contingency is deemed satisfied,

2. Agree with the Seller on other remedies (e.g., resolve in further negotiations), or

3. Disapprove the inspection and terminate the agreement receiving a refund of the

earnest money.

**Inspection Response for Form 35 – Form 35R (Appendix I)**

Note: there is another reminder for the Buyer to NOT send the inspection report lest the Buyer waive the inspection contingency. This form will help the parties navigate the inspection contingency with the three sections:

1. **Buyer’s Inspection Response or Request for Repairs or Modifications** – 4 options

2. **Seller’s Response to Buyer’s Request for Repairs or Modifications** – 4 options

3. **Buyer’s Reply to Seller’s Response** – 3 options with the third option being risky because

if the Buyer cannot get the Seller to agree by the end of the negotiated time period, and

the Buyer does not terminate the transaction, the transaction is moving forward with no repairs. **Timeframes do not repeat!**

Best business practice for buyer’s broker is for Buyer to get a bid from their contractor and attach it to the 35R requesting Seller to have the contractor identified in the attached bid perform the work in the attached bid. Seller may want to have their own contractor give a bid and reply with a different contractor’s bid (or that Seller will do the work themselves). This would, of course, be a counter to the Buyer’s Inspection Notice. The major drawback to this approach is whether the Buyer will have time to get a bid, thus they may need to invoke their additional inspection period.

Note: under the septic and sewer inspection contingencies, the tennis match will not take place. Rather, at the end of these two inspection contingencies, the Buyer will have two options: move forward or terminate the transaction. If Buyer does not give notice of disapproval, the contingency will be deemed waived.

**D. Broker Compensation**

Much is changing in our industry with regard to this topic. From the Department of Justice and Federal Trade Commission investigations to the class action lawsuits throughout the country, the message is being heard loud and clear: transparency of compensation is critical, especially with regard to buyer brokerage services. Buyer broker compensation is addressed in the following forms:

**Exclusive Sale and Listing Agreements - Form 1A for NWMLS (Appendix K) or Form 1A-SWF for**

**other MLS’s in the state (Appendix L)**

**Amendment to Exclusive Listing Agreement – Form 18 (Appendix M)**

**Buyer Brokerage Services Agreement – Form 41 (Appendix N)**

**Purchase & Sale Agreement – Form 21 (Appendix O)**

**Buyer Brokerage Firm’s Compensation Addendum – Form 41C (Appendix P)**

Listing brokers will negotiate uncoupled compensation in the **Exclusive Sale and Listing Agreement – Form 1A or 1A-SWF (Appendices K & L)** with the seller agreeing to pay compensation to the listing brokerage and separately agreeing to pay compensation to the buyer brokerage (or not!).

Buyer brokers will negotiate compensation in the **Buyer Brokerage Services Agreement – Form 41 (Appendix N)** or other with the buyer agreeing to pay compensation to the buyer brokerage firm and negotiation of what happens with the seller’s offer of compensation (if any). E.g., if the seller’s offer of compensation is the same, more or less than the buyer’s obligation per the buyer brokerage compensation agreement.

Buyer brokers are obligated under the revisions to the Agency Law to disclose the buyer brokerage firm compensation offered in the MLS in specific term 17 of the **Purchase & Sale Agreement – Form 21 (Appendix O)** and mark a box either “Pay as Offered” or “Other - See Addendum” depending on the terms of their buyer compensation agreement. If the box “Other – See Addendum” is marked, the parties will negotiate via the **Buyer Brokerage Firm’s Compensation Addendum – Form 41C (Appendix P)**.

What if Line 17 is ignored? Do we have mutual acceptance? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Does the seller have to pay? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**E. New Forms Effective in 2023**

The following forms were added to the statewide forms library in July, 2023 and licensees should be familiar with them and how and when to use them:

1. **Notice of Termination (Information Verification Period) – Form 90Z (Appendix Q)** To be used when the Buyer is giving notice of termination because information provided by the Seller or listing brokerage firm related to the property is materially inaccurate. This notice must include a description of the materially inaccurate information
2. **Notice of Low Appraisal – Form 22AN (Appendix R)** To be used when the Buyer’s lender’s appraisal of the property is lower than the sales price and the Buyer gives the Seller notice of such which is optional. Seller then has a few options, but ultimately, gives the Buyer a right or termination if the parties cannot work something out
3. **Notice of Appraisal Work Order – Form 22AWO (Appendix S)** To be used when the Buyer’s lender is requiring work to be performed as a condition of final loan approval. The parties will then proceed to negotiate a resolution … or not!
4. **Notice to Second Buyer – Form 39N (Appendix T)** To be used to give notice to a bump buyer what happened with the 22B contingent buyer (they are still in play … or not!)

**E. Early or Delayed Occupancy**

Though early and delayed possession should generally be discouraged as they can cause serious issues, licensees should understand how to explain the benefits and pitfalls of early and delayed possession. If the parties are going to engage in early or delayed possession, licensees should be very familiar with and require the parties execute the following forms:

1. **Rental Agreement (Buyer Occupancy Prior to Closing) – Form 65A (Appendix U)**
2. **Rental Agreement (Seller Occupancy After Closing) – Form 65B (Appendix V)**

The parties should also be encouraged to talk to their respective insurance companies to assure appropriate hazard/liability and renter’s insurance policies are in place as applicable.

**F. Agency Law Pamphlet**

Effective January 1, 2024 under the revised Agency Law – RCW 18.86.120, the pamphlet that is required to be provided to consumers has been modified in format considerably in that it is shorter and more consumer friendly – see **Real Estate Brokerage in Washington – Form P1 (Appendix W).** The pamphletincludes information on the following:

* + 1. Introduction
    2. Licensing and Supervision of Brokers
    3. Agency Relationship

For Sellers

For Buyers

For both Buyer and Seller – as a Limited Dual Agent

Duration of Agency Relationship

* + 1. Written Services Agreement (required for compensation to be paid!)
    2. A Broker’s Duties to All Parties
    3. A Broker’s Duties to the Buyer or Seller
    4. Limited Dual Agent Duties
    5. Compensation
    6. Short Sales

The pamphlet must still must be provided before the buyer or seller signs anything, including giving it to an unrepresented buyer before they sign a PSA and it is wise to get proof of receipt.

**G. Earnest Money**

The following earnest money issues are ones that continue to be problematic in our industry:

1. Forfeiture of earnest money vs. election of remedies: brokers have a duty to educate their clients on the benefits and pitfalls of both options
2. Late delivery by Buyer:
   1. What does it mean for the seller and buyer? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
   2. Should the parties sign an addendum? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. What does the PSA say about earnest money when one party is in default (Buyer vs. Seller) ? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. How much earnest money can be forfeited? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Interpleader action: what it is and how does it work – see **Purchase & Sale Agreement – Form 21 (Appendix O)** paragraph b, lines 22-39 on page 2 which sets out the statutory process required under RCW 64.04.220.
3. Earnest money to be released to the Seller should be deposited into escrow and not immediately released to the Seller.

**TOPIC AREA II: LEGISLATIVE UPDATE**

#### A. Reform to the Law of Real Estate Agency Effective January 1, 2024

**NWMLS’s Legal Bulletin No. 224 (Appendix Y)** is a comprehensive look at the following aspects of the Law of Real Estate Agency in Washington State:

1. Introduction and a brief history of RCW 18.86 - the Law of Real Estate Agency in Washington State:
   1. These are the first significant changes since the Agency Law took effect in 1997.
   2. The revisions including the following:
      1. Requiring brokerages to enter into written brokerage services agreements (No agreement? No compensation!)
      2. Changing the term “dual agent” to “limited dual agent” to reflect that a broker representing both Buyer and Seller in the same transaction is limited to the representation they can offer
      3. Giving buyers and sellers the clear choice to consent (or not) to an individual broker acting as a limited dual agent requiring separately initialed consent by the consumer
      4. Clarifying that a broker owes certain duties in RCW 18.86.030 to all parties in a transaction (clarifying a court opinion)
      5. Ensuring complete transparency with regard to compensation by requiring that real estate firms disclose to all parties any compensation offered to a firm by another party or another firm
      6. Modernizing and simplifying the “pamphlet” that brokers must provide to consumers explaining general information about real estate brokerage relationships
   3. Several forms revisions came out on January 1, 2024.
2. Senate Bill 5191: unanimously passed and modernizes the 25-year-old Agency Law to:
   1. Provide additional consumer protections and clarity
   2. Enhance transparency for consumers
   3. Increase professionalism in the real estate brokerage industry
3. Agency relationships and brokerage services agreements: broker will be required to enter into a written “brokerage services agreement” not only with sellers but with buyers, as well – in order to receive compensation from any party or firm for rendering brokerage services, a firm must have a brokerage services agreement with its client
   1. Presumption of buyer agency still exists so must have a buyer brokerage services agreement with a buyer “before or as soon as reasonably practical after its appointed broker commences rendering real estate brokerage services to, or on behalf of the principal” (see scenarios below)
   2. Contents of a services agreement:
      1. Term: with buyers must include a default term of 60 days with an option for longer
      2. Identity of the broker appointed as the agent for the principal
      3. Whether the agency relationship is exclusive or non-exclusive
      4. Whether the principal consents to limited dual agency (must be separately initialed by the principal)
      5. Whether the principal consents to supervising broker(s) acting as a limited dual agent(s) on an in-house transaction
      6. Contain terms of compensation:
         1. Amount principal agrees to compensate the firm
         2. Principal’s consent, if any, and any terms to such consent to compensation sharing between firms and parties, and
         3. Principal’s consent, if any, and any terms of such consent, to compensation of the firm by more than one party.
      7. Whether the appointed broker agrees to show the buyer properties, even if there is no agreement or offer by any party or firm to pay compensation to the buyer’s firm for the services provided to the buyer
   3. Exceptions: BPO’s, CMA’s and referrals so long as no real estate brokerage services were provided by the referring agent, as well as commercial real estate brokerage services (however, this requires separate and additional disclosure)
4. Limited dual agency: a limited dual agent is limited in the scope of representation that the broker can provide to either principal
5. Duties owed to all parties: section 030 duties are owed to all parties (not only the broker’s own client, but to all parties in the transaction) including:
   1. Exercise reasonable skill and care
   2. Deal honestly and in good faith
   3. Timely present all written offers, notices and communications to and from either party
   4. Disclose all material facts known by the broker and not apparent or readily ascertainable to a party
   5. Account in a timely manner for all money and property received from or on behalf of either party;
   6. Provide the pamphlet to all parties to whom the broker renders brokerage services and to any unrepresented party
   7. Disclose in writing who the broker represents (page 1 on the PSA)
   8. **Disclose in writing any terms of compensation offered by a party or a firm to a real estate firm representing another party. 🡪 NEW DUTY!**
6. The Real Estate Brokerage in Washington pamphlet: modernized and simplified and to be provided to any party to whom a broker renders brokerage services “as soon as practical but before they sign a services agreement.”
7. New buyer brokerage services agreement: Buyer brokers will likely use the new **Buyer Brokerage Services Agreement – Form 41 (Appendix N)** though a firm may create its own agreement. Some of the provisions of this form include:
   1. Default expiration date of 60 days with the option for a longer term
   2. Option to choose excluding or non-exclusive
   3. A provision for the buyer to initial consenting to “limited dual agency”
   4. A section to address whether the broker will show properties to the buyer for which there is no offer from the seller to compensate the buyer broker and the buyer has not agreed to compensate the broker
   5. Variety of options for compensation including an option to request that the seller pay any of the compensation that is not already covered in the compensation offered in the listing clarifying that the seller may, but it not required to offer compensation to the buyer brokerage firm and what happens in the following scenarios:
      1. Seller’s offer equal to compensation
      2. Seller’s offer greater than compensation
      3. Seller’s offer less than compensation
8. Revised listing agreements and related statewide forms
   1. Exclusive Sale and Listing Agreements have been revised
   2. **Amendment to Buyer Brokerage Services Agreement – Form 41A (Appendix X)** that can be used to extend the term of the agreement, change the nature of the relationship from non-exclusive to exclusive, appoint additional brokers to represent the buyer, etc.
   3. New forms for tenant brokerage services, compensation disclosure (e.g., for use in commercial transactions) and termination of buyer representation.
9. Purchase and Sale Agreements and Lease/Rental Agreements: appropriate minor revisions have been made to conform to the Agency Law revisions
10. Existing agency relationships and pending transactions as of 1-1-24
    1. Listing agreements signed prior to 1-1-24 should be amended to address seller’s consent to limited dual agency. This can be done with the **Amendment to Exclusive Listing Agreement – Form 18 (Appendix M)**
    2. PSA’s for transactions pending (mutually accepted) before 1-1-24 should not be amended
    3. For buyer brokers who have existing agency relationships, brokers should have buyers sign new **Buyer Broker Services Agreements – Form 41 (Appendix N)** if the broker will continue to provide services to the buyer on or after 1-1-24
    4. For buyers who are a party to an existing PSA that are waiting to close, no need for the buyer to sign a services agreement. However, if that sale fails and the broker will continue to provide services to the buyer, the parties must enter into a services agreement as required by the revised law.
11. Availability of revised and new forms: SAMPLE copies available prior to the law going into effect with the forms being available for use on January 1, 2024. Make sure to recycle any old forms.

Best practices:

1. Brokers will have to have conversations with buyers about compensation much earlier (suggest an initial buyer consultation)
   1. Buyers may negotiate with a broker as to the amount of compensation
   2. Who will be paying the compensation? Buyer, seller or both?

Sellers are not required to offer compensation and the amended Agency Law no longer protects broker from showing property if there is no offer of compensation. Rather, the law presumes there will be a written compensation agreement because all brokers must have one with their client as soon as reasonably practical.

What does “as soon as reasonably practical” mean?

**Scenario #1:** Broker meets a buyer at an open house that broker is holding for the listing broker (broker is not the listing broker). Buyer wants to purchase the house. When would “as soon as reasonably practical” be and what should the broker do?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Scenario #2:** Broker receives a telephone inquiry from a buyer regarding a listing. Buyer does not want to pursue the listing, but wants to view other listings. They meet at the broker’s office, discuss what the buyer wants and schedule showings for later that week. When would “as soon as reasonably practical” be and what should the broker do? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Scenario #3:** Broker receives a buyer referral. Broker and buyer talk on the phone and agree to meet and view a listing. When would “as soon as reasonably practical” be and what should the broker do? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Scenario #4:** Broker has a long-term client relationship with buyer who contacts broker to discuss another purchase. When would “as soon as reasonably practical” be and what should the broker do? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Scenario #5:** Broker is contacted by a former client who wants to sell in six months, but wants to meet now to discuss market value, suggestions for improvements and staging, advice regarding timing the market and the like. When would “as soon as reasonably practical” be and what should the broker do? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Scenario #6:  Broker gets an online lead on a listing and buyer wants to schedule to see the house.  Is this like the open house where the broker goes ahead, meets them to show the house and if the buyer says, "Thanks, but no thanks, this house doesn't work for me and I don't need anything further from you." no BBSA would be required?  Should broker email a copy of the Agency Pamphlet before going to show the house? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Scenario #6 continued: If after a call or email on a particular listing the buyer says, "Nope, that house won't work for me, but could you pull up some other houses and send them to me?"  I assume at that point that the broker would send them the pamphlet and tell them that they cannot send them any other listings until they sign a BBSA, correct? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Scenario #7:  Broker is having a super busy day and a buyer calls and wants to see a house.  Broker asks broker colleague in their office to go open the door for the buyer.  Does Broker need to add broker colleague as a co-broker on the 41A before they go out and show the house (difficult to get done in the midst of a busy day!) or can broker colleague just go ahead and show them the house?  Broker will be the one to write an offer if the buyer likes it.

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Scenario #8:  Broker is advertising a lead generation website that consumers can sign up online to search for and look at listings.  Do the consumers have to sign a Buyer Brokerage Services Agreement (BBSA) before Broker (using the term "Broker" loosely since it is an automated site) can send the consumer listings? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Scenario #9: Prior to 1-1-24 Broker is working with a lead generation website buyer (been sending them listings and conversing with them about the market, maybe has shown them a house, etc.).  When would Broker need to have a BBSA signed with a buyer like this after 1-1-24? Brokers might have literally hundreds of consumers like this on their lead generation websites and trying to have them all sign BBSA’s would be crazy impossible. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Bottom line is that “as soon as reasonably practical” likely means as soon as possible and also likely much sooner than practitioners have been accustomed to having clients sign representation agreements. Most would agree this would definitely mean at the next in-person meeting if not before!

MLS’s are reinterpreting rules to allow zero compensation from the seller and revised agency agreements (listing and buyer representation agreements) make this clear to buyers and sellers.

**B. Recent legislation that has been adopted may affect licensees’ business:**

It is well known that Washington State ranks last in the number of housing units per family nationally, and the dream of homeownership is getting farther and farther away from families in our state. Some of the legislation adopted in the 2023 legislative session had to do with creating more housing. It should also be noted that the State’s Capital and Operating Budgets include the largest state investment in housing supply and homelessness prevention in Washington State history. The major housing programs total over $1.1 billion, not including additional fund for implementation of various housing and GMA Laws. Major investments include:

* $400 million for the state’s Housing Trust Fund
* $170 million for affordable housing, shelters, land acquisition, and affordable transit-oriented development
* $160 million for emergency housing and homelessness facilities at the local level
* $150 million for the Covenant Homeownership Program funded through a $100 recording fee
* $120 million for addressing homeless encampments, wraparound services and child and youth homelessness
* $66 million to supplement shortfalls in existing programs funded by document recording fees

Some legislation from this past session adopted surrounded brokerage services and sought to update and correct several real estate brokerage issues.

In numeric order, this newly adopted legislation is as follows:

**1. HB 1042: Concerning the use of existing buildings for residential purposes.** This law enables the creation of housing in existing, under-utilized buildings in areas zoned for commercial and mixed-uses and provides limits on a local jurisdiction’s ability to approve and condition such projects. It also provides direction to the State Building Code Council to waive the energy code for unchanged portions of an existing building but requiring new dwelling units’ compliance with the current energy code.

**2. HB 1046: Expanding housing supply by supporting the ability of public housing authorities to finance affordable housing developments by re-benchmarking area median income limits.**

**3. HB 1070: Exempting the sale and leaseback of property by a seller from the Residential Landlord-Tenant Act (RLTA) when the seller agrees to written lease at closing.** This legislation fixed the concern buyers had in extending delayed possession to sellers that this tenancy would fall under the “just cause” eviction rules of the RLTA and make it difficult to get a seller out of the property if they did not vacant when they agreed to vacate as long as the lease back is for three months or less after closing and the buyer does not accept any rent after three months after closing.

**4. HB 1074: Addressing documentation and processes governing landlord’s claim for damage to residential premises.** This law makes changes to a housing provider’s ability to withhold security deposit amounts, including a prohibition against withholding amounts for ordinary wear and tear, and additional requirements for providing documentation to support the basis for any amounts withheld. The changes including:

a. Housing provider must provide a written checklist or statement

specifically describing the condition and cleanliness of or existing damages to the premises, fixtures, equipment, appliances, and furnishings included, but not limited to walls including all paint and paper, carpet and other flooring, furniture and appliances

i. Renters may request one free replacement copy of this written

checklist.

1. Deadline for a housing provider to provide a refund of the security

deposit amount and provide a statement of the basis for retaining any security deposit is now extended to 30 days (previously 21 days)

* 1. “Wear and tear” is defined as “wear resulting from ordinary use of the

premises” and means deterioration that result from the intended use of a dwelling including breakage or malfunction due to age or deteriorated condition. This does not include damage from negligence, carelessness, accident or abuse by the renter, immediate family member, occupant or guest.

* 1. Along with the statement providing the basis for withholding any security deposit amount, Housing Providers must now also include:
     1. Copies of estimates received or invoices paid to reasonably substantiate damage charges
     2. Copy of bill, invoice or receipt where repairs are performed by the Housing Provider or their employee
     3. Cost of repair and replacement of fixtures, equipment, appliances and furnishings if their condition was not reasonably documented in the written checklist
     4. In excess of the cost of repair or replacement if the damages portion in situations in which the premises including fixtures, equipment, appliances and furnishings are damages in excess of wear resulting from ordinary use of the premises, but the damage does not encompass the item’s entirety
  2. If any of the above requirements are not met, the Housing Provider is liable for the full amount of the deposit and for up to double the security deposit if the Housing Provider intentionally refuses to follow the requirements.
  3. Housing Providers must commence any lawsuit for sums exceeding a security deposit within 3 years of termination of the rental agreement.

**5. HB 1110: Increasing middle housing in areas traditionally dedicated to single-family detached housing.** This legislation requires certain GMA planning cities, based on size, to allow the construction of middle housing types such as duplexes, triplexes, fourplexes and townhomes.

a. A city with a population of at least 25,000 but less than 75,000 must allow two units per lot, four units if one unit is affordable and four units within a ¼ mile of a major transit stop

b. Cities over 75,000 must allow four units per lot, six units if two units are affordable and six units within a ¼ mile of a major transit stop

c. Cities under 25,000 that are part of a UGA connected to the largest city in a county for the state’s largest counties (King, Pierce, Snohomish, Kitsap, Thurston, Spokane & Whatcom) must allow two units per lot

These minimum unit requirements can be through allowing different types of middle housing within residential zones areas. Cities may also implement middle housing on 75% of lots, rather than on all lots, under certain circumstances. The bill also provided exemptions from allowing middle housing types in areas served only by septic systems if water or other urban services are not available, in environmentally sensitive areas, if there is a risk of displacement of low-income residents, or for other reasons. Extension of the timeline to allow middle housing may be approved by the Dept of Commerce. Cities must implement the requirements of the bill within six months of the date required to update GMA Comp Plans.

**6. HB 1181: Improving the state’s response to climate change by updating the state’s planning framework.** This law makes significant changes to the GMA to incorporate climate change into local government comp plans.

**7. HB 1293: Streamlining development regulations.** HB 1293 modifies the local

government design review process by requiring that local design review processes can only apply clear and objective regulations, not subjective or unadopted aesthetic standards. Design review regulation also may not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal. The design review process must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits and may not include more than one public meeting.

**8. HB 1337: Expanding housing options by easing barriers to the construction and use of accessory dwelling units.** This bill makes it easier to build Accessory Dwelling Units (ADUs) in urban growth areas. The bill requires cities and counties to adopt zoning and development regulations allowing a minimum of two ADUs which are a minimum of 1,000 square feet on zoned lots allowing single-family uses unless the lot is less than 2,000 square feet. The legislation specifies the general development requirements cities and counties are to use when permitting ADUs. In addition, there is no owner occupancy requirement and allows jurisdictions to restrict the use of ADUs for short-term rentals.

**9. HB 1474: Establishing Covenant Homeownership Program**. This lawincreases document recording fees by $100 to fund a new state program to provide down payment and closing cost assistance to people, or heirs, impacted by racially restrictive covenants. The program is estimated to raise $75 million per year for homeownership.

**10. 2SHB 1009: Military Spouse employment.** This bill seeks to expedite the

professional licensing for military spouses.

**11. SB 5045: Incentivizing rental of accessory dwelling units to low-income households.** The county legislative authority for a county with a population of 1,500,000 or more, may choose to exempt an ADU from property tax if the ADU is maintained as a rental property for low-income households who adjusted income is at or below 60% of median household income for the country. Rent charged to the tenant may not exceed 30% of the tenant’s monthly income. No exemption if occupied by a person under the age of sixty that is an immediate family member of the taxpayer. Taxpayer must file notice of intent to participate in the exemption program.

**12. SB 5058: Exempting buildings with 12 or fewer units that are no more than two stories from the definition of multi-unit residential building.** This law seeks to make it easier to develop and build these properties by exempting these projects from requirements applicable to multi-tenant residential buildings to submit building enclosure design documents and inspections.

**13. SB 5258: Increasing the supply and affordability of condominium units and townhouses as an option for homeownership.** This law modifies several laws relating to the construction of condominiums and townhouses. The process for resolving condominium construction defect claims, and the ability of a developer/contractor to repair claimed defects (“right to cure”) is modified so that a written report from a qualified construction defect professional is required and must describe in detail the nature of the claimed defect. The timelines in the right to cure process are also accelerated to encourage repair and resolution of claims, rather than litigation. SB 5258 also increases the amount of deposits for new condominium projects, modifies impact fee schedules to include consideration of smaller unit sizes, creates a down payment assistance pilot project for certain condominium and townhouse buyers, and requires all cities to allow unit lot subdivisions for fee simple townhouse construction.

**14. SB 5290: Concerning consolidating local permit review processes.** This legislation provides project permit streamlining requirements, creating efficiencies and predictability for both non-profit and for-profit builders. Key components include: 1) Permit processing improvements, including time frame for project application, completeness for review and permit application review time periods; 2) Requirement for jurisdictions to submit an annual performance report for housing permit applications as listed permit types to Commerce and post on the jurisdiction’s website; 3) Options for actions to further streamline permit processes; 4) Commerce to develop a consolidated permit review grant program for eligible local governments; and 5) Commerce to convene a digital permitting process work group.

**15. SB 5399: Future Listing Contracts.** This legislation limits agreements that provide cash to homeowners in exchange for obligating the homeowner to a future real estate listing agreement to a length of five years, without renewal or extension, and allows the homeowner to cancel the contract 10 days after signature.

**16. SB 5412: Reducing local government’s land use permitting workloads.** This law

broadens the SEPA exemption for infill residential housing to include all housing development within urban growth areas. Under the bill, all project actions that propose to develop one or more residential housing units within the incorporated areas in an urban growth area or middle housing within the unincorporated areas in an urban growth area, and that meet certain criteria, are categorically exempt from SEPA. The categorical exemption applies to proposed projects that do not have existing or anticipated transportation system, safety or operational deficiencies. A city or county must consult with the Washington State Department of Transportation (WSDOT) to determine if anticipated transportation system, safety or operation deficiencies exist in connection with a proposed project. The project action is eligible for categorical exemption only if it meets criteria so that SEPA review occurred of the project area at the GMA planning level stage.

**TOPIC AREA III: BUSINESS PRACTICES UPDATE AND PROFESSIONAL STANDARDS**

#### A. Raising the Bar of Professionalism in Interactions

1. The National Association of REALTORS ® published the **Pathways to**

**Professionalism** in 2013 and revised it in 2019. The Pathways to Professionalism provides a list of 42 suggestions on elevating one’s business practices to a more

professional level (see **Appendix Z - NAR's Pathways to Professionalism**). The

Pathways to Professionalism is divided into three sections: Respect for the

Public, Respect for Property and Respect for Peers and can be found at:

<https://www.nar.realtor/code-of-ethics-and-arbitration-manual/pathways-to-professionalism>

a. **Respect for the Public**

i. At the top of the list is the Golden Rule: Do unto others as you

would have them do unto you.

ii. Knowing all 21 suggestions in this category are important,

what are the three suggestions under the Respect for the Public section that stand out to you/you see as current issues in our industry?

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b. **Respect for Property**

i. This section is largely focused on keeping property a licensee is

showing clean and in the same condition as when they first entered it.

ii. Also note the suggestion regarding Seller’s instruction regarding photographing or videographing the property interior or exterior. In this day and age of video showings, etc., respect the Seller’s

privacy.

c. **Respect for Peers**

i. Knowing all 12 suggestions in this category are important,

what are the three suggestions under the Respect for Peers

section that stand out to you/you see as current issues in our

industry?

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Note: Failure to comply with the Pathways to Professionalism is not necessarily a basis for professional disciplinary action such as a Code of Ethics complaint.

#### B. Managing Broker (MB) responsibilities with regard to managing a firm or branch office or as a team leader

1. Roles & Responsibilities with regard to managing a firm or branch office or as a team leader (assuming a signed delegation agreement is in place):

a. **Supervise the conduct of brokers** **for compliance** with RCW 18.85 (licensing law), RCW 18.235 (Uniform Regulation of Businesses and Professionals Act), and RCW 18.86.030 (Agency Law – Duties of a Broker) – RCW 18.85.275 (1)

b. Oversight of documents and funds including **timely delivery to the**

**designated broker all funds and records to be held or maintained by the real estate** firm which includes listings, transactions, management agreements, and other contracts relating to providing brokerage services which are property of the real estate firm. - RCW 18.85.275 (2). A MB is responsible for such funds and records only after they are received from the broker. Note a broker is responsible for transactions and funds until they are turned in to the MB or DB.

c. **Delegation Agreements must be in writing:** The DB may delegate by written agreement the duties of safe handling of client funds, maintenance of trust accounts, and transaction and trust account records, along with supervision of brokers, to a MB licensed to the firm – RCW 18.85.275 (3). The DB shall maintain a record of the firm's MBs and delegations to MBs.

d. **Authority to handle brokerage service contracts on behalf of the firm:** The DB or the DB’s delegate has the authority to amend, modify, bind, create, rescind, terminate or release real estate brokerage service contracts on behalf of the real estate firm – RCW 18.85.275 (4). Note: only the DB has the authority to accept new or transferred licensees to represent the real estate firm.

e. **Must be licensed as a MB if supervising other brokers:** A broker who supervises or exercises right of control over other brokers in the performance of real estate brokerage services must be licensed as a MB – RCW 18.85.275 (5).

f. **Other responsibilities of a MB could include:**

i. cooperating with the Department of Licensing in investigations, audits and licensing matters

ii. following and enforcing the firm’s policy on referring home inspectors and using Form 41D when necessary

iii. following and enforcing the rules regarding safe handling of client funds, timely delivery of client funds and property and legal advertising

iv. establish a policy and procedures manual for the firm including such things as handing client funds and property

v. reviewing contracts and documents as submitted to the firm

vi. trust account reconciliation monthly

vii. ensuring licensees working for the firm are properly licensed (license audits)

***RCW 18.85.275 Designated broker or managing broker—Authority and duties****. (1) The designated broker or managing broker shall supervise the conduct of brokers and managing brokers for compliance with this chapter, chapter 18.235 RCW, and RCW 18.86.030. (2) Listings, transactions, management agreements, and other contracts relating to providing brokerage services are property of the real estate firm. Brokers shall timely deliver to their appointed managing broker all funds and records required to be held or maintained by the real estate firm. A managing broker is responsible for such funds and records only after they are received from the broker. A managing broker shall timely deliver to the designated broker all funds and records required to be held or maintained by the real estate firm. The designated broker is responsible for such funds and records only after they are received from the managing broker or broker. (3) The designated broker may delegate by written agreement the duties of safe handling of client funds, maintenance of trust accounts, and transaction and trust account records, along with supervision of brokers, to a managing broker licensed to the firm. The designated broker shall maintain a record of the firm's managing brokers and delegations to managing brokers. (4) The designated broker or the designated broker's delegate has the authority to amend, modify, bind, create, rescind, terminate, or release real estate brokerage service contracts on behalf of the real estate firm. The designated broker has the authority to accept new or transferred licensees to represent the real estate firm. (5) A broker who supervises or exercises right of control over other brokers in the performance of real estate brokerage services must be licensed as a managing broker. (6) During the first two years of a broker's licensure, a managing broker must provide a heightened level of supervision as provided by rule of the director.*

***WAC 308-124C-135 Managing broker responsibilities.*** *Managing broker responsibilities include, but are not limited to: (1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder. (2) Cooperating with the department in an investigation, audit or licensing matter. (3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules. (4) Keeping the real estate program informed of his or her current mailing address. (5) Following the designated broker's written policy on referral of home inspectors. (6) Being appropriately licensed. (7) Delivering transaction documents and brokerage service contracts to designated broker or delegated managing broker within two business days of mutual acceptance. (8) Following licensing laws and rules regarding: (a) Safe handling of customer/client funds and property. (b) Timely delivery of customer/client funds or property. (c) Proper and legal advertising. (d) Modifying or terminating brokerage service contract on behalf of the firm.*

2. **“Baby brokers” required heightened supervision:** During the first two years of a broker's licensure, a MB or DB must provide a heightened level of supervision such as review of written contracts within 5 business days of mutual acceptance (firms may have shorter requirements) – RCW 18.85.275 (6)

**C. Multiple Offer Scenarios**

**1. Licensees should help Sellers evaluate offers based on the Buyer’s ability to**

**close on the terms that are acceptable to the Seller.** The goal of the listing

broker should be to get the Seller the most money, but also to get the transaction closed (e.g., the highest price offer may face appraisal issues or be a

less qualified Buyer).

* 1. Spreadsheet approach
  2. Buyer love letters give the Buyer a chance to explain the particular reasons they love and want to purchase the Seller’s home beyond the terms of the PSA (e.g., we love the garden, neighborhood or some feature of the property), but love letters can be problematic as they can contain discriminatory information leading the parties down a path toward fair housing violations.

Oregon recently made love letters illegal, but the Supreme Court of Oregon overturned this law as a violation of the First Amendment right to free speech.

NAR does not outright prohibit love letters, but they have taken a strong stand against them.

* 1. **How can a licensee help a Seller avoid evaluating offers based on discriminatory information or protected classes?**

Licensees should consider the sealed envelope / separate email attachment approach.

Department of Licensing can take action against a licensee complicit in a fair housing violation via a love letter and the licensee’s license can be suspended or revoked, the licensee can face a fine and/or be required to complete a fair housing course.

Licensee should consult with their MB or DB if the letter is questionable.

Note: Violation of the fair housing laws = violation of licensing law and is punishable as a gross misdemeanor.

**3. Seller and Buyer options when facing multiple offer situations.**

a. Buyer should be counseled to make offer as strong as possible including:

i. being pre-approved for their loan

ii. larger than usual earnest money

iii. higher purchase price (perhaps even over the asking price)

iv. removing/minimizing contingencies though make sure Buyer is

not compromising too much!

v. shorter closing period

vi. could consider using Form 35E – Escalation Addendum though the

licensee should explain the risks and rewards and Buyer should

only use if they are ready, willing and able to pay the cap

b. In representing the Seller, counsel as follows:

i. help the Seller to evaluate all offers and determine which suits the Seller’s situation best which does not always mean the highest net

offer – other factors may be more important to the Seller such as

types of contingencies, financing vs. cash, etc. (spreadsheet approach)

ii. evaluation NEVER includes a discussion of protected classes

iii. Seller may want a Form 22EF – Evidence of Funds included in the

transaction if the Buyer did not include it in their initial offer to ensure Buyer has the funds to close

* 1. Buyers and Sellers have many options in responding to a multiple offer situations – See **Appendix AA - NAR's “A Buyers’ & Sellers’ Guide to Multiple Offer Negotiations”** which can be found at:

<https://www.nar.realtor/about-nar/policies/professional-standards-and-code-of-ethics/a-buyers-and-sellers-guide-to-multiple-offer-negotiations>

**4. Of course, time is of the essence when presenting offers in a multiple-offer**

**situation.** In this situation, immediately, or at least ASAP, is “timely” because if

the Seller accepts an offer and a higher offer has come in they did not get to see, this is a problem!

**5. Best practices in multiple offer situations:** a professional and cooperative

attitude between all parties and licensees is in everyone’s best interest!

a. Confirm receipt of all offers.

b. Present all offers to the Seller.

c. Communicate result of offer presentation to all buyer’s brokers who submitted written offers – in writing.

Note: **Good communication is essential!** Licensees should respond to all communications from other licensees in a timely and professional manner – return calls, reply to texts and answer emails. Timely communication is the best way to make sure a small problem does not become a large one. A professional and cooperative attitude is in everyone’s best interest.

Final thought: Do not stoop to the level of a less professional colleague who is rude, incompetent, short-tempered or even a bully. Always remain professional and reply in a business-like manner. However, if issues persist, and poor communication is getting in the way of being able to being able to serve your client, see your managing broker or designated broker as they may be able to offer advice and may need to intervene.

**D. Risky practices in an abundant market.**

**1. Risky practices from listing brokers:**

a.Falsifying information about competing offers

i. violation of the Uniform Regulation of Business and Professional

Act (RCW 18.235.130) – misrepresentation in any aspect of the conduct of the business or profession

ii. violation of the Agency Law (RCW 18.86) duty to deal honestly

and in good faith

iii. sharing the terms of competing offers is not illegal if the Seller

instructs the listing agent to do so, but get the instruction in writing

b. Offer instructions – are they broker or seller instructions? A listing broker

cannot use these instructions as a tool to filter buyers’ offers – must present all offers to the Seller per the Agency Law duty to timely present **ALL** written offers to your client.

c. Review date for offers in the future – listing brokers are holding until a

date in the future when offers should be presented to the Seller the day it is received by the listing broker

i. If holding offers for review on a future date, this should be the

Seller’s idea or the seller should agree by signing off on the MLS Data Sheet where this is stated.

ii. If the Seller wants to accept an offer early, what advice do you

provide to the Seller? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. Misleading photos in the listing – adding a blue sky is ok, removing power lines is not!
  2. Seller Pre-Inspection – dangerous because this does not eliminate the Buyer’s need for their own inspection as the inspector may be liable if they missed something, but not to the Buyer because the pre-inspection isn’t their inspection, or the Seller claims repairs were made (Buyer will need an inspection to confirm).

**2. Bright line rules:**

a. Present all offers received to the Seller.

b. Present all offers **timely** (likely, the day the offer is received).

c. Every action taken is the Seller’s choice.

**3. Risky practices from buyer brokers:**

a. Dangerous inspection scenarios:

i. Waiving all inspections (consider degrees of waiver instead e.g.,

“Buyer will not request repairs under $1,000.”)

ii. Inspection “for information only” and how to write this up if this is

how the Buyer would like to proceed

iv. Buyer Pre-Inspection – Seller may balk

b. Earnest money to be released to the Seller upon mutual acceptance

c. Buyer waiving the right to receive the Seller Disclosure Statement

**NOTE: On all of these risky scenarios, buyers should be advised, in writing, to seek legal counsel!**

**E. Transaction Coordinators.**

Is there such a thing as a licensed transaction coordinator? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

There are many brokers who are using transaction coordinators who are either licensed brokers or employees of other firms. This typically happens when a broker is listing or selling a property in an area distant from where they are licensed. The issue is that the transaction coordinator is not licensed to the listing/selling broker's firm, so who they represent in the transaction is not clear to the Buyer or Seller. In some cases, the broker hires the transaction coordinator (or sometimes a licensed broker) to "just show the property" to the client. Again, this presents an issue with agency, and with supervision of that broker's activities at the property and their interaction with the first broker's clients. This issue is being reviewed by the Department of Licensing as the concerns with supervision, confidential information, record keeping, etc. are legitimate concerns. And now, with the changes to the agency law, this licensed TC would have to have a brokerage service agreement with your client, as well. You should NOT use a licensed transaction coordinator unless they are licensed to your firm.

**F. Top violations by licensees with the DOL**

1. Recordkeeping

a. Failure to retain all required items - what is required to be kept? \_\_\_\_\_\_\_

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***RCW 18.85.285:*** *Brokers and managing brokers must submit complete copies of their transactions to their firm. The designated broker shall keep adequate records of all real estate transactions handled by or through the firm or firms to which the designated broker is registered. The records shall include, but are not limited to, a copy of the purchase and sale agreement, earnest money receipt, and an itemization of the receipts and disbursements with each transaction. These records and all other records specified by the director by rule are open to inspection by the director or the director's authorized representatives.*

***WAC 308-124C-105 Required records.*** *The designated broker is required to keep the following on behalf of the firm: (1) Trust account records: (a) Duplicate receipt book or cash receipts journal recording all receipts; (b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs; (c) Validated duplicate bank deposit slips or daily verified bank deposit; (d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account; (e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entries; (f) Reconciled bank statements and canceled checks for all trust bank accounts.* ***(2) Other records: (a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees. (b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files. (c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and material correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account. (d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.***

b. Not meeting standards of storage (for privacy or security) – RCW

18.85.231 – Office or records depositories required – record maintenance

and production

c. Lack of accessibility – RCW 18.85.231 and WAC 308-124C-105(2)(d)

* + 1. Trust Accounts, specifically, failure to set up or maintain properly – see RCW 18.85.285 – Transactions and Recordkeeping – trust accounts and WAC 308-124C-105 (1)

3. Broker Responsibilities

a. Lack of proper delegation – RCW 18.85.275 (3) – delegations must be in

writing

b. Conducting duties outside of scope (where delegation is not permitted)

4. Advertising:

a. Individuals, teams, or branches not doing business as licensed by the Department

***WAC 308-124B-210 Advertising.*** *A firm must operate under their firm name or an assumed name as licensed. (1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, email, newspaper, and other visual media must include the firm name or an assumed name as licensed. (2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must: (a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand. (b) Not use a name, title, or brand which suggests a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company." (c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate." (d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.*

* 1. Missing information on materials (signage, website, etc.) – see section (1) above

1. Failure to update information such as address with the Department

***WAC 308-124B-205 Change of office location****. The real estate designated broker of the firm shall submit within ten days a completed change of address application to the real estate program together with the return of all licenses, completed transfer applications, and payment of the correct fees.*

1. Failure to cooperate with the Department (investigations):

***WAC 308-124I-060 Investigations****. (1) All requests for records will be issued by an authorized representative of the director, such as auditors, investigators, program staff, or other designee. (2) Requests for records, documents or detailed explanations shall be in writing, by regular mail, facsimile, electronic mail, or in person pursuant to an investigation. (3) The investigator will not request documents or explanations by telephone unless the telephone request is followed by a request in writing. In the case of a request for records or documents, a licensee will not be charged for failure to cooperate with the department unless the investigator has made a written request for records or documents that the licensee is required to keep, and has described the records or documents with sufficient specificity to notify the licensee of what records or documents are being sought. (4) An investigator may inspect a licensee's licensed business location and records without a warrant pursuant to an investigation approved or assigned by the director or designee between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding state holidays, or during the hours of an appointment agreed to with the licensee. Licensees are advised that refusal to permit access may result in disciplinary action under chapters 18.85 and 18.235 RCW. An investigator may not forcibly enter a licensed business location unless accompanied by law enforcement personnel pursuant to a valid search warrant.*

1. Unlicensed activity – you must have a license to conduct real estate brokerage services as defined in RCW 18.85.011 (17):

***RCW 18.85.011- Definitions*** *… (17) "Real estate brokerage services" means any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation, or by a licensee on the licensee's own behalf: (a) Listing, selling, purchasing, exchanging, optioning, leasing, renting of real estate, or any real property interest therein; or any interest in a cooperative; or any interest in a floating home or floating on-water residence, as defined in RCW 90.58.270; (b) Negotiating or offering to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate, or any real property interest therein; or any interest in a cooperative; or any interest in a floating home or floating on-water residence, as defined in RCW 90.58.270; (c) Listing, selling, purchasing, exchanging, optioning, leasing, renting, or negotiating the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, lease, exchange, or rental of the land upon which the manufactured or mobile home is or will be located; (d) Advertising or holding oneself out to the public by any solicitation or representation that one is engaged in real estate brokerage services; (e) Advising, counseling, or consulting buyers, sellers, landlords, or tenants in connection with a real estate transaction; (f) Issuing a broker's price opinion. For the purposes of this chapter, "broker's price opinion" means an oral or written report of property value that is prepared by a licensee under this chapter and is not an appraisal as defined in RCW 18.140.010 unless it complies with the requirements established under chapter 18.140 RCW; (g) Collecting, holding, or disbursing funds in connection with the negotiating, listing, selling, purchasing, exchanging, optioning, leasing, or renting of real estate or any real property interest; and (h) Performing property management services, which includes with no limitation: Marketing; leasing; renting; the physical, administrative, or financial maintenance of real property; or the supervision of such actions.*

**G. Broker Personal Safety**

10 commandments of broker safety:

1. Do not meet strangers at any property, especially vacant ones. Employ the buddy system especially at open houses.

2. Always take your own car. You have more control if you are driving.

3. Avoid work after dark.

4. Dress for safety. Avoid expensive jewelry, flashy clothes, etc.

5. Set a showing itinerary. Make sure someone at the office knows the itinerary and when you expect to return. Call in if you are going to deviate from the itinerary.

6. Use a prospect ID form. Get the prospect’s driver’s license information and other material data. A real buyer should not object.

7. Use an agent ID form. Make sure office has information about your height; weight; age; eye color; car make, model, color, year, license number; cell phone number; next of kin; etc.

8. Establish a coded distress signal that you can use in phoning the office so as not to alert the potential perpetrator if they feel they are in a threatening situation (e.g., “red file”)

9. If you feel something is not right, stop working immediately. Get away from the situation. Read *The Gift of Fear*by Gavin DeBecker – an excellent read about honing the gift that is your intuition!

10. Notify your broker or manager immediately. This is not a time to be embarrassed or vain. Quick action may lead to an arrest.

**Current Issues in Washington Residential Real Estate**

**(Core Curriculum 2024-25)**

**Appendix**

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