

# HOUSE BILL REPORT

## HB 1284

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**As Reported by House Committee On:**  
Consumer Protection & Business

**Title:** An act relating to reforming the real estate agency law to require written brokerage services agreements, improve consumer disclosures, and provide that certain legal duties of brokers apply to all parties in the transaction.

**Brief Description:** Reforming the real estate agency law.

**Sponsors:** Representatives Corry, Walen, Connors, Hutchins, Rude, Cheney and Barkis.

**Brief History:**

**Committee Activity:**

Consumer Protection & Business: 1/24/23, 1/27/23 [DPS].

**Brief Summary of Substitute Bill**

- Requires a written services agreement between a real estate firm and a buyer or seller.
- Requires disclosure of certain information relating to real estate brokerages, such as compensation terms.
- Provides that certain legal duties of real estate brokers apply to all parties to the transaction.
- Modifies the Washington State Real Estate Brokerage pamphlet to include changes to the law and improvements in readability.

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### HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Walen, Chair; Reeves, Vice Chair; Corry, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman, Cheney, Connors, Donaghy, Hackney, Ryu, Sandlin, Santos and Volz.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Megan Mulvihill (786-7304).

**Background:**

Real Estate Brokers.

Chapter 18.86 RCW passed in 1996 and codified a number of duties concerning real estate brokerage relationships. The Department of Licensing is responsible for licensing and regulating real estate brokers. Performing real estate brokerage services includes, but is not limited to, rendering the following services directly or indirectly on another's behalf for compensation: (1) listing, selling, purchasing, or renting real estate; (2) negotiating or offering to negotiate the purchase, sale, or lease of real estate; (3) advising buyers, sellers, landlords, or tenants in connection with real estate; and (4) advertising oneself to the public as engaging in such services.

Agency Relationship.

A broker is an "agent" when the broker enters into an agency relationship with a buyer or seller to perform real estate brokerage services. A seller is only represented if the seller enters into a written agreement with the agent. An agent may represent a buyer unless the agent has entered into a written agreement with the seller. An agent does not need to have a written agreement with a buyer to perform services. An agent may represent both the buyer and the seller if all parties agree in writing. This is known as dual agency, and the written consent must disclose compensation information. Regardless of whether a broker is an agent, a broker owes certain duties, which may not be waived, to all parties to whom the broker renders real estate brokerage services, including to:

- exercise reasonable skill and care;
- deal honestly and in good faith;
- present all written offers, notices, and other communications in a timely manner;
- disclose all material facts known by the broker, and not easily ascertainable, to a party;
- account for all money and property received in a timely manner;
- provide a pamphlet on the law of real estate agency to all parties; and
- disclose what party a broker represents, if any, in a real estate transaction.

An agent need not conduct an independent investigation of the property or of either party's financial condition. The agent has no duty to verify any information the agent reasonably believes to be reliable.

Duties of an Agent.

Certain duties apply between an agent and a seller, an agent and a buyer, or in a dual agency relationship, including the duty to:

- be loyal by taking no action that would be adverse to the client;
- disclose in a timely manner any conflicts of interest;
- advise the client to get expert advice on matters relating to the transaction beyond the agent's expertise; and

- refrain from disclosing confidential information about the client except under subpoena or court order.

These duties cannot be waived. The only duty that can be waived is the duty to make a good faith and continuous effort to seek a buyer for a seller or a seller for a buyer. It is not a breach of duty for the agent, in the case of a seller, to show or list competing properties, or in the case of a buyer, to show properties to competing buyers.

#### Subagent.

A subagent is a broker who is engaged to act on behalf of a buyer or seller by the buyer's or seller's agent, as long as the buyer or seller has authorized the broker in writing to appoint subagents.

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### **Summary of Substitute Bill:**

Various definitions are updated to reflect changes to the real estate brokerage relationship chapter. The definition of subagent is stricken, as are all applicable statutory references.

#### Agency Relationship.

A real estate firm and broker must enter into a written services agreement with a principal to establish an agency relationship. The principal is either the buyer or seller. The firm's designated broker and any managing broker responsible for the supervision of those brokers are also agents of the principal.

#### Written Services Agreements.

A written services agreement must contain:

- the term of the agreement;
- the broker appointed as an agent for the principal;
- whether the agency relationship is exclusive or nonexclusive;
- whether the principal consents to limited dual agency;
- the terms of compensation;
- in an agreement with a buyer, whether the broker agrees to show a property when there is no agreement or offer by any party or firm to pay compensation to the broker's firm; and
- any other agreements between the parties.

A service agreement is not required when a broker performs real estate brokerage services as a buyer's agent solely for commercial real estate.

#### Broker's Duties to All Parties.

In addition to existing duties owed by a broker to a principal, these duties are amended so the broker owes these duties to the principal and to all parties in a transaction. In addition, two additional responsibilities are added:

- to not only provide the statutorily required pamphlet explaining real estate brokerage in Washington to all parties to whom the broker renders real estate brokerage services, but also to any unrepresented party; and
- to disclose in writing any terms of compensation offered by a party or a real estate firm to a real estate firm representing another party.

Limited Dual Agency.

In a transaction in which different brokers affiliated with the same firm represent different parties, the firm's designated broker, and any managing broker responsible for the supervision of both brokers, is considered a limited dual agent. Each appointed broker must solely represent the party with whom they have a relationship.

Compensation Disclosure.

To receive compensation from any party, a firm must have a written services agreement with the party the firm represents. In lieu of a written services agreement, a broker rendering services to a buyer solely for commercial real estate may disclose in writing to the buyer the sources and amounts of any compensation the broker expects to receive.

Washington Real Estate Agency Pamphlet.

The pamphlet brokers are required to provide to all parties to a transaction is updated to reflect changes in the law, and the pamphlet language is specified in layman's terms rather than restating the statutes.

**Substitute Bill Compared to Original Bill:**

The substitute bill added an effective date of January 1, 2024.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) There has not been an update to the Real Estate Agency Act in 30 years. The world of real estate has changed as there are a number of different agencies and models. Consumer expectations have also changed. When the law was originally written, consumers did not search online for houses to purchase. Case law, agency investigations, and the statute were all analyzed for opportunities to update the law. The agency law pamphlet is rated by the Consumer Federation of America as the worst in the country because it just restates the statute.

There are a number of good changes included that will help protect the consumer by providing greater transparency and clarity. Whether the consumer is going through a real estate transaction as a seller or a buyer, it is important for them to know what their agent's responsibilities are. Under this legislation, the buyer will also have to enter into a written services agreement with the agent. This is evolution of the industry from having a time when buyers had no representation to now having representation. This should be further evolved by requiring a services agreement. There is no other service that a person receives where there isn't a contract in place. The services agreement will increase transparency and control for the buyer because the compensation arrangements will be visible. Typically the seller creates the terms, but it is the buyer who funds the compensation. Many buyers do not realize they can negotiate the compensation. While agents can currently enter into written agreements with buyers, the vast majority do not. Written services agreements will also help explain dual agency to buyers and sellers. There have not been a lot of complaints about lack of transparency because buyers and sellers do not realize that there is anything to complain about.

A recent court case in 2020, *Falcon Properties v. Bowlfits 1308*, overturned a previously held understanding about broker's duties. These are the duties owed to the buyer, to the seller, and to all parties involved in a transaction. The court of appeals decision stated that duties owed to all parties are not owed to all parties, but rather the broker only owes those duties to the person they represent. This changed what the industry understood. Without these legislative changes, brokers would not owe a duty of honesty and good faith to the buyer if they represent the seller. This fix would help protect consumers.

(Opposed) The fact that the law has not been amended in years is a testament to the law. There is no need for more regulations as there is no evidence of any harm. There are no complaints about lack of transparency, and no consumer signed up to testify that they had been harmed. The written services agreement does not protect the buyer, it protects the broker. While the updates to the pamphlet are good, it still does not describe what exclusive, inclusive, or dual agency are well. Dual agency should be illegal. The arguments supporting written services agreements are false. This is bad for the real estate industry and the consumers.

**Persons Testifying:** (In support) Representative Chris Corry, prime sponsor; Bill Clarke and Annie Fitzsimmons, Washington Realtors; Shelly Schmitz, Keller Williams Real Estate and Washington Real Estate Commission; Justin Haag, Northwest Multiple Listing Service; and Lars Neste, Demco Law Firm.

(Opposed) Doug Tingvall; and Kary Krismer.

**Persons Signed In To Testify But Not Testifying:** None.