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SENATE BILL 5554

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State of Washington

54th Legislature

1995 Regular Session

By Senators Gaspard, Deccio, Pelz, Palmer, Wojahn, Hale, McAuliffe and Schow

Read first time 01/26/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to real estate brokerage relationships; adding a  
2 new chapter to Title 18 RCW; and providing an effective date.

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

4 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context clearly  
5 requires otherwise, the definitions in this section apply throughout  
6 this chapter.

7 (1) "Agent" means a licensee who enters into a brokerage  
8 relationship under this chapter.

9 (2) "Affiliated licensee" means a licensed associate broker or a  
10 salesperson as defined in chapter 18.85 RCW.

11 (3) "Broker" means the same as defined in chapter 18.85 RCW.

12 (4) "Brokerage relationship" means a limited agency relationship  
13 created under this chapter between a licensee and a principal either by  
14 mutual agreement or as provided in section 2 of this act relating to  
15 the performance of services of a licensee.

16 (5) "Business opportunity" means and includes a business, business  
17 opportunity and good will of an existing business, or any one or  
18 combination thereof.

1 (6) "Buyer's/tenant's agent" means a licensee who has entered into  
2 a brokerage relationship with only the buyer/tenant in a real estate  
3 transaction, and includes subagents engaged by a buyer's/tenant's  
4 agent.

5 (7) "Dual agent" means a licensee who, with the written consent of  
6 all parties to a contemplated real estate transaction, has entered into  
7 a brokerage relationship with both the seller/landlord and  
8 buyer/tenant.

9 (8) "Leasing" means and includes renting and a "lease" means and  
10 includes a rental agreement.

11 (9) "Licensee" means a broker, as defined in chapter 18.85 RCW, or  
12 an affiliated broker or salesperson, as defined in chapter 18.85 RCW,  
13 acting as subagent of the broker.

14 (10) "Limited agency relationship" means an agency relationship  
15 between a licensee and a principal as limited by this chapter.

16 (11) "Principal" means the seller/landlord or the buyer/tenant who  
17 enters into a brokerage relationship with a broker under to this  
18 chapter.

19 (12) "Seller's/landlord's agent" means a licensee who has entered  
20 into a brokerage relationship with only the seller/landlord in a real  
21 estate transaction, and includes subagents engaged by a  
22 seller's/landlord's agent.

23 (13) "Purchase and sale agreement" means any preclosing agreement  
24 regarding the sale or other conveyance of an interest in real estate or  
25 a business opportunity.

26 (14) "Real estate transaction" and "transaction" and other similar  
27 terms shall include real estate sales, real estate leasing, and sales  
28 of business opportunities.

29 (15) "Real estate" and "property" and other similar terms include  
30 real estate, leases, and business opportunities.

31 (16) "Seller/landlord" and "buyer/tenant" means, when applying to  
32 a transaction, as appropriate based upon whether the transaction is a  
33 sale or a lease transaction.

34 (17) "Subagent" means a licensee who is authorized to act on behalf  
35 of a principal by the principal's agent.

36 NEW SECTION. **Sec. 2.** RELATIONSHIPS BETWEEN LICENSEES AND THE  
37 PUBLIC. (1) Unless otherwise agreed in writing and signed by all  
38 parties, a licensee who enters into a brokerage relationship with a

1 principal shall be limited to representing only that principal in the  
2 transaction.

3 (2) A licensee shall be a buyer's/tenant's agent unless the:

4 (a) Licensee enters into a written agency agreement with the  
5 seller/landlord;

6 (b) Licensee enters into a subagency agreement with the  
7 seller's/landlord's agent;

8 (c) Licensee enters into a written dual agency agreement with the  
9 parties; or

10 (d) Parties agree otherwise in writing.

11 (3) A licensee may work with a party in separate transactions  
12 pursuant to different relationships including but not limited to,  
13 selling or leasing property as a seller's/landlord's agent and working  
14 with that seller/landlord in buying or leasing another property as a  
15 seller's/landlord's agent, or as a subagent, if the licensee complies  
16 with this chapter.

17 (4) A broker is not required to offer or engage in more than one of  
18 the brokerage relationships under this chapter.

19 (5) A licensee shall provide to the licensee's principal a written  
20 disclosure of the statutory duties of a licensee as set forth in  
21 sections 3 through 5 of this act. This disclosure shall be provided on  
22 or before the earlier of the date that a written agreement establishing  
23 a brokerage relationship is entered into between the licensee and the  
24 principal, or the date that the licensee obtains the principal's  
25 signature on a purchase and sale agreement.

26 NEW SECTION. **Sec. 3. DUTIES OF A SELLER'S/LANDLORD'S AGENT.** (1)  
27 Unless otherwise agreed in writing signed by a seller/landlord and a  
28 seller's/landlord's agent after the disclosures required by section  
29 2(5) of this act have been made, the duties and obligations of a  
30 seller's/landlord's agent or subagent are limited to the following:

31 (a) Exercise reasonable skill and care for the seller/landlord;

32 (b) Deal with the seller/landlord at all times in good faith;

33 (c) After a purchase and sale agreement or lease is entered into by  
34 the seller/landlord, be loyal to the seller/landlord by taking no  
35 action that is adverse or detrimental to the seller's/landlord's  
36 interest in the transaction;

37 (d) Abide by the terms of the brokerage agreement;

- 1 (e) Advise the seller/landlord to obtain expert advice on material  
2 matters that are outside the scope of the brokerage relationship;
- 3 (f) Disclose to the seller/landlord in a timely manner all material  
4 facts that the agent has agreed in writing to investigate, and items  
5 described in section 9(3) of this act;
- 6 (g) Seek a buyer/tenant to purchase or lease the  
7 seller's/landlord's property at a price, terms, and conditions  
8 acceptable to the seller/landlord; except that the seller's/landlord's  
9 agent is not obligated to seek additional offers to purchase or lease  
10 the property while the property is subject to an existing purchase and  
11 sale agreement or lease;
- 12 (h) Present all written offers to and from the seller/landlord in  
13 a timely manner regardless of whether the property is subject to an  
14 existing purchase and sale agreement or lease;
- 15 (i) Disclose to the seller/landlord all existing material facts  
16 actually known by the seller's/landlord's agent and not reasonably  
17 ascertainable to the seller/landlord that substantially adversely  
18 affect the ability of the buyer/tenant to perform under the terms of  
19 any seller/landlord financing or the terms of the lease;
- 20 (j) Not disclose any confidential information from or about the  
21 seller/landlord, except with the seller's/landlord's consent, even  
22 after termination of the brokerage relationship. "Confidential  
23 information" means information from or concerning a seller/landlord  
24 that:
- 25 (i) Was acquired by the seller's/landlord's agent during the course  
26 of a brokerage relationship with the seller/landlord;
- 27 (ii) The seller/landlord reasonably expects to be kept  
28 confidential;
- 29 (iii) Is not a matter of public record;
- 30 (iv) The seller/landlord has not disclosed or authorized to be  
31 disclosed to third parties;
- 32 (v) If disclosed, would operate to the detriment of the  
33 seller/landlord; and
- 34 (vi) The seller/landlord personally would not be obligated to  
35 disclose to the buyer/tenant or third parties;
- 36 (k) Account to the seller/landlord in a timely manner for all money  
37 and property received from, or on behalf of, the seller/landlord; and
- 38 (l) Comply with all requirements of this chapter.

1 (2)(a) A seller's/landlord's agent owes no duty or obligation to a  
2 buyer/tenant; except that a seller's/landlord's agent shall disclose to  
3 the buyer/tenant all existing material facts actually known by the  
4 seller's/landlord's agent and not reasonably ascertainable to the  
5 buyer/tenant, that substantially adversely affects the value of the  
6 property or operates to materially impair or defeat the purpose of the  
7 transaction.

8 (b) A seller's/landlord's agent owes no duty to conduct an  
9 independent inspection of the property for the benefit of the  
10 seller/landlord or buyer/tenant and owes no duty to independently  
11 verify the accuracy or completeness of any statement made by the  
12 seller/landlord or other information obtained from any source  
13 reasonably believed by the seller's/landlord's agent to be reliable.

14 (3) A seller's/landlord's agent's showing of alternative properties  
15 not owned by the seller/landlord to prospective buyers/tenants, and the  
16 listing of competing properties for sale or lease by the  
17 seller's/landlord's agent, is not a breach by the seller's/landlord's  
18 agent of any duty or obligation to the seller/landlord.

19 NEW SECTION. **Sec. 4.** DUTIES OF A BUYER'S/TENANT'S AGENT. (1)  
20 Unless otherwise agreed in writing signed by a buyer/tenant and a  
21 buyer's/tenant's agent after the disclosures required by section 2(5)  
22 of this act have been made, the duties and obligations of a  
23 buyer's/tenant's agent or subagent are limited to the following:

24 (a) Exercise reasonable skill and care for the buyer/tenant;

25 (b) Deal with the buyer/tenant at all times in good faith;

26 (c) After a purchase and sale agreement or lease is entered into by  
27 the buyer/tenant, be loyal to the buyer/tenant by taking no action that  
28 is adverse or detrimental to the buyer's/tenant's interest in the  
29 transaction;

30 (d) Abide by the terms of the brokerage agreement, if any;

31 (e) Advise the buyer/tenant to obtain expert advice on material  
32 matters that are outside the scope of the brokerage relationship;

33 (f) Seek for a buyer a property for purchase, and for a tenant, a  
34 property to lease, at a price, terms, and conditions that are  
35 acceptable to the buyer/tenant; except that the buyer's/tenant's agent  
36 shall not be obligated to seek other properties while the buyer/tenant  
37 is a party to an existing purchase and sale agreement or lease;

1 (g) Present all written offers to and from the buyer/tenant in a  
2 timely manner regardless of whether the buyer/tenant is already a party  
3 to an existing purchase and sale agreement or lease;

4 (h) Disclose to the buyer/tenant in a timely manner all existing  
5 material facts actually known by the buyer's/tenant's agent and which  
6 are not reasonably ascertainable to the buyer/tenant, including without  
7 limitation material facts regarding the condition of the property and  
8 items described in section 9(3) of this act;

9 (i) Not disclose any confidential information from or about the  
10 buyer/tenant, except with the buyer's/tenant's consent, even after  
11 termination of the brokerage relationship. "Confidential information"  
12 means information from or concerning the buyer/tenant that:

13 (i) Was acquired by the buyer's/tenant's agent during the course of  
14 a brokerage relationship with the buyer/tenant;

15 (ii) The buyer/tenant reasonably expects to be kept confidential;

16 (iii) Is not a matter of public record;

17 (iv) The buyer/tenant has not disclosed or authorized to be  
18 disclosed to third parties;

19 (v) If disclosed, would operate to the detriment of the  
20 buyer/tenant; and

21 (vi) The buyer/tenant personally would not be obligated to disclose  
22 to the seller/landlord or third parties;

23 (j) Account to the buyer/tenant in a timely manner for all money  
24 and property received from, or on behalf of, the buyer/tenant; and

25 (k) Comply with all requirements of this chapter.

26 (2)(a) A buyer's/tenant's agent owes no duty or obligation to a  
27 seller/landlord, except that a buyer's/tenant's agent shall disclose to  
28 the seller/landlord all existing material facts actually known by the  
29 buyer's/tenant's agent and not reasonably ascertainable to the  
30 seller/landlord, that substantially adversely affects the ability of  
31 the buyer/tenant to perform under the terms of any seller/landlord  
32 financing.

33 (b) A buyer's/tenant's agent owes no duty to conduct an independent  
34 investigation of the buyer's/tenant's financial condition for the  
35 benefit of the seller/landlord and owes no duty to independently verify  
36 the accuracy or completeness of statements made by the buyer/tenant, or  
37 other information obtained from any source reasonably believed by the  
38 licensee to be reliable.

1 (3) A buyer's/tenant's agent may show properties in which the  
2 buyer/tenant is interested to other prospective buyers or tenants  
3 without breaching any duty or obligation to the buyer/tenant. A  
4 buyer's/tenant's agent's assistance to competing buyers or tenants in  
5 making offers for and entering into agreements to purchase properties  
6 in which any other buyer/tenant represented by the buyer's/tenant's  
7 agent is interested is not a breach of any duty or obligation to a  
8 buyer/tenant.

9 NEW SECTION. **Sec. 5. DUTIES OF A DUAL AGENT.** (1) A licensee may  
10 act as a dual agent only with the written consent of both the  
11 seller/landlord and the buyer/tenant in the transaction, and the  
12 written consent may not be waived. The written consent must include a  
13 statement of the licensee's duties and responsibilities and describe  
14 the amount of the broker's compensation and identify the party  
15 obligated to pay the compensation.

16 (2) A dual agent represents both the seller/landlord and the  
17 buyer/tenant and unless otherwise agreed in writing signed by the  
18 licensee's principal after the disclosures required by section 2(5) of  
19 this act have been made, has the following limited duties and  
20 obligations:

21 (a) Exercise reasonable skill and care for both principals;

22 (b) Deal with both principals at all times in good faith;

23 (c) After a purchase and sale agreement or lease is entered into by  
24 the principals, take no action that is adverse or detrimental to the  
25 transaction;

26 (d) Advise both principals to obtain expert advice on material  
27 matters that are outside the scope of the brokerage relationship;

28 (e) Disclose to the respective principal in a timely manner all  
29 material facts that the agent has agreed in writing to investigate for  
30 such principal, and items described in section 9(3) of this act;

31 (f) Seek a buyer/tenant to purchase or lease the  
32 seller's/landlord's property at a price, terms, and conditions  
33 acceptable to the seller/landlord, except that the licensee is not  
34 obligated to seek additional offers to purchase or lease the property  
35 while the property is subject to an existing purchase and sale  
36 agreement or lease;

37 (g) Seek for the buyer a property for purchase, and for the tenant,  
38 a property to lease, at a price, terms, and conditions that are

1 acceptable to the buyer/tenant, except that the licensee is not  
2 obligated to seek other properties while the buyer/tenant is a party to  
3 an existing purchase and sale agreement or lease;

4 (h) Present all written offers to and from each principal in a  
5 timely manner regardless of whether the principal is already a party to  
6 an existing purchase and sale agreement or lease;

7 (i) Disclose to the seller/landlord all existing material facts  
8 actually known by the licensee and not reasonably ascertainable to the  
9 seller/landlord that substantially adversely affect the ability of the  
10 buyer/tenant to perform under the terms of any seller/landlord  
11 financing or the terms of the lease;

12 (j) Disclose to the buyer/tenant in a timely manner all existing  
13 material facts actually known by the buyer's/tenant's agent and which  
14 are not reasonably ascertainable to the buyer/tenant, including without  
15 limitation material facts regarding the condition of the property, and  
16 items described in section 9(3) of this act;

17 (k) Not disclose any confidential information from or about either  
18 principal, except with the principal's consent, even after termination  
19 of the brokerage relationship; and

20 (l) Account to each principal in a timely manner for all money and  
21 property received from, or on behalf of, each principal.

22 (3) Notwithstanding any other provision in this chapter to the  
23 contrary, a dual agent may not disclose to any party of the transaction  
24 confidential information about the other party to the transaction.  
25 Information required to be disclosed under sections 3(1)(i) and 4(1)(h)  
26 of this act is not confidential information.

27 (4) In a transaction in which different licensees affiliated with  
28 the same broker represent different parties, the broker is a dual agent  
29 and each affiliated licensee shall represent only the party with whom  
30 the licensee has a brokerage relationship, unless all parties agree  
31 otherwise in writing.

32 NEW SECTION. **Sec. 6.** DURATION OF BROKERAGE RELATIONSHIP. (1) A  
33 brokerage relationship commences when the licensee agrees to provide  
34 brokerage services to a principal and shall continue until performance,  
35 completion, expiration, or termination of the agency agreement in  
36 accordance with its terms.



1 (2) A licensee owes no further duty or obligation after termination  
2 of the brokerage relationship, except as otherwise agreed in writing,  
3 and as follows:

4 (a) Accounting for all moneys and property received during the  
5 relationship; and

6 (b) Keeping confidential all confidential information.

7 (3) Nothing in this section affects an agreement between the  
8 parties regarding the payment of compensation during or after the  
9 brokerage relationship.

10 NEW SECTION. **Sec. 7.** COMPENSATION. (1) In any real estate  
11 transaction, the broker's compensation may be paid by the  
12 seller/landlord, and/or the buyer/tenant, and/or a third party, and/or  
13 by sharing the compensation between brokers.

14 (2) An agreement to pay, or the payment of, compensation does not  
15 establish an agency relationship between the party who agrees to pay,  
16 or pays, the compensation and the broker or any affiliated licensee.

17 (3) A seller/landlord may agree that a seller's/landlord's broker  
18 may share with another seller's/landlord's and/or a buyer's/tenant's  
19 broker the compensation paid by the seller/landlord.

20 (4) A buyer/tenant may agree that a buyer's/tenant's broker may  
21 share with another buyer's/tenant's and/or seller's/landlord's broker  
22 the compensation paid by the buyer/tenant.

23 (5) A broker may be compensated by more than one party for services  
24 in a transaction, if those parties consent in writing at or before the  
25 time of entering into a purchase and sale agreement or lease.

26 (6) An agreement for a buyer's/tenant's broker to receive  
27 compensation based on the purchase price or rents charged is not a  
28 breach of any duty or obligation to the buyer/tenant.

29 NEW SECTION. **Sec. 8.** VICARIOUS LIABILITY. (1) A principal is not  
30 liable for an act, error, or omission by the principal's agent or  
31 subagent arising out of a brokerage relationship unless the principal  
32 expressly consented to the act, error, or omission.

33 (2) A licensee is not liable for an act, error, or omission of a  
34 subagent under this chapter, unless the licensee knew of the act,  
35 error, or omission. This section does not limit the liability of a  
36 broker for an act, error, or omission by an affiliated licensee under  
37 his or her supervision.

1        NEW SECTION.    **Sec. 9.**    IMPUTED KNOWLEDGE AND NOTICE.    (1) A  
2 principal is not deemed to have knowledge or notice of any facts known  
3 by a principal's agent or subagent, unless the principal has actual  
4 knowledge or notice of those facts.

5        (2) A licensee is not deemed to have knowledge or notice of any  
6 facts known by a subagent, unless the licensee has actual knowledge or  
7 notice of those facts.

8        (3) Notwithstanding subsections (1) and (2) of this section,  
9 communication to or from a principal's agent regarding the other  
10 party's offer, acceptance of offer, refusal of offer, counteroffer,  
11 withdrawal of offer, any extension of time periods, a disclosure  
12 statement under chapter 64.06 RCW, or other communications with persons  
13 or entities named in the purchase and sale agreement or lease  
14 constitutes notice to and knowledge of the licensee's principal. This  
15 subsection does not alter any legal or contractual provision requiring  
16 written notice.

17        NEW SECTION.    **Sec. 10.**    AFFILIATED LICENSEES.    (1) All affiliated  
18 licensees to the extent allowed by their license, have the same duties  
19 and responsibilities to the parties as the broker under this chapter,  
20 except as provided in section 5(4) of this act.

21        (2) All affiliated licensees have the same protection from  
22 vicarious liability as their broker.

23        NEW SECTION.    **Sec. 11.**    CONSTRUCTION.    This chapter applies to the  
24 exclusion of common law duties and responsibilities of principal and  
25 agent which have to this date been applied to real estate brokers  
26 affiliated licensees and their principals. Nothing in this chapter  
27 affects the obligations and responsibilities of a licensee while  
28 engaging in the authorized or unauthorized practice of law as  
29 determined by the Washington courts.

30        NEW SECTION.    **Sec. 12.**    This chapter applies to brokerage  
31 relationships first entered into after the effective date of this act,  
32 unless the licensee and the licensee's principal agree in writing that,  
33 commencing with the effective date of this act, this chapter will apply  
34 to a brokerage relationship which is entered into prior to the  
35 effective date of this act.

1        NEW SECTION.   **Sec. 13.**   CAPTIONS.   Captions used in this chapter do  
2   not constitute any part of the law.

3        NEW SECTION.   **Sec. 14.**   Sections 1 through 13 of this act  
4   constitute a new chapter in Title 18 RCW.

5        NEW SECTION.   **Sec. 15.**   This act shall take effect January 1, 1996.

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