



INITIAL AGENCY DISCLOSURE PAMPHLET

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

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

Real Estate Agency Relationships

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

Seller's Agent -- Represents the seller only.

Buyer's Agent -- Represents the buyer only.

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

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

Definition of "Confidential Information"

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

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

Duties and Responsibilities of a Seller's Agent

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

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

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

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

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

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

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

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

Duties and Responsibilities of a Buyer's Agent

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

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

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

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

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

- (7) Unless agreed otherwise in writing, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase.

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

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

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

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

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

Disclosed Limited Agents have the following duties to their clients:

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

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

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

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

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

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

Washington State Agency Disclosure

For More Information, go to <http://apps.leg.wa.gov/rcw/default.aspx?cite=18.86.120>

The Law of Real Estate Agency

This pamphlet describes your legal rights in dealing with a real estate firm or broker. Please read it carefully before signing any documents.

RCW 18.86.010

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a real estate firm and a buyer and/or seller relating to the performance of real estate brokerage services.

(2) "Agent" means a broker who has entered into an agency relationship with a buyer or seller.

(3) "Broker" means broker, managing broker, and designated broker, collectively, as defined in chapter [18.85](#) RCW, unless the context requires the terms to be considered separately.

(4) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof when the transaction or business includes an interest in real property.

(5) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(6) "Buyer's agent" means a broker who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(7) "Confidential information" means information from or concerning a principal of a broker that:

(a) Was acquired by the broker during the course of an agency relationship with the principal;

(b) The principal reasonably expects to be kept confidential;

(c) The principal has not disclosed or authorized to be disclosed to third parties;

(d) Would, if disclosed, operate to the detriment of the principal; and

(e) The principal personally would not be obligated to disclose to the other party.

(8) "Dual agent" means a broker who has entered into an agency relationship with both the buyer and seller in the same transaction.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a broker.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter [18.85](#) RCW.

(12) "Real estate firm" or "firm" have the same meaning as defined in chapter [18.85](#) RCW.

(13) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(14) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(15) "Seller's agent" means a broker who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(16) "Subagent" means a broker who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the broker in writing to appoint subagents.

RCW 18.86.020

Agency relationship.

(1) A broker who performs real estate brokerage services for a buyer is a buyer's agent unless the:

(a) Broker's firm has appointed the broker to represent the seller pursuant to a written agency agreement between the firm and the seller, in which case the broker is a seller's agent;

(b) Broker has entered into a subagency agreement with the seller's agent's firm, in which case the broker is a seller's agent;

(c) Broker's firm has appointed the broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the broker's firm has appointed the broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer, in which case the broker is a dual agent;

(d) Broker is the seller or one of the sellers; or

(e) Parties agree otherwise in writing after the broker has complied with RCW [18.86.030](#)(1)(f).

(2) In a transaction in which different brokers affiliated with the same firm represent different parties, the firm's designated broker and any managing broker responsible for the supervision of both brokers, is a dual agent, and must obtain the written consent of both parties as required under RCW [18.86.060](#). In such case, each of the brokers shall solely represent the party with whom the broker has an agency relationship, unless all parties agree in writing that the broker is a dual agent.

(3) A broker may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the broker complies with this chapter in establishing the relationships for each transaction.

[2013 c 58 § 2; 1997 c 217 § 1; 1996 c 179 § 2.]

RCW 18.86.030

Duties of broker.

(1) Regardless of whether a broker is an agent, the broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may not be waived:

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

(c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

(d) To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the broker has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW [18.86.120](#) to all parties to whom the broker renders real estate brokerage services, before the party signs an agency agreement with the broker, signs an offer in a real estate transaction handled by the broker, consents to dual agency, or waives any rights, under RCW [18.86.020](#)(1)(e), [18.86.040](#) (1)(e), [18.86.050](#)(1)(e), or [18.86.060](#)(2) (e) or (f), whichever occurs earliest; and

(g) To disclose in writing to all parties to whom the broker renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the broker, whether the broker represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

(2) Unless otherwise agreed, a broker owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the broker to be reliable.

RCW 18.86.040

Seller's agent — Duties.

(1) Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW [18.86.030](#) and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;

(b) To timely disclose to the seller any conflicts of interest;

(c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.

(b) The representation of more than one seller by different brokers affiliated with the same firm in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest.

[2013 c 58 § 5; 1997 c 217 § 2; 1996 c 179 § 4.]

Notes:

Real estate agency pamphlet -- 1997 c 217 §§ 1-6: See note following RCW [18.86.120](#).

Effective date -- 1997 c 217 §§ 1-6 and 8: See note following RCW [18.86.020](#).

RCW 18.86.050

Buyer's agent — Duties.

(1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW [18.86.030](#) and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;
- (c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)(a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different brokers affiliated with the same firm in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.

[2013 c 58 § 6; 1997 c 217 § 3; 1996 c 179 § 5.]

Notes:

Real estate agency pamphlet -- 1997 c 217 §§ 1-6: See note following RCW [18.86.120](#).

Effective date -- 1997 c 217 §§ 1-6 and 8: See note following RCW [18.86.020](#).

RCW 18.86.060

Dual agent — Duties.

(1) Notwithstanding any other provision of this chapter, a broker may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW [18.86.030](#)(1)(f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW [18.86.030](#) and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
- (b) To timely disclose to both parties any conflicts of interest;
- (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
- (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;

(e) Unless otherwise agreed to in writing after the dual agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW [18.86.030](#)(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

(3)(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.

(b) The representation of more than one seller by different brokers licensed to the same firm in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.

(4)(a) The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different brokers licensed to the same firm in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest.

[2013 c 58 § 7; 1997 c 217 § 4; 1996 c 179 § 6.]

Notes:

Real estate agency pamphlet -- 1997 c 217 §§ 1-6: See note following RCW [18.86.120](#).

Effective date -- 1997 c 217 §§ 1-6 and 8: See note following RCW [18.86.020](#).

RCW 18.86.070

Duration of agency relationship.

(1) The agency relationships set forth in this chapter commence at the time that the broker undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

(a) Completion of performance by the broker;

(b) Expiration of the term agreed upon by the parties;

(c) Termination of the relationship by mutual agreement of the parties; or

(d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) Except as otherwise agreed to in writing, a broker owes no further duty after termination of the agency relationship, other than the duties of:

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

(b) Not disclosing confidential information.

[2013 c 58 § 8; 1997 c 217 § 5; 1996 c 179 § 7.]

Notes:

Real estate agency pamphlet -- 1997 c 217 §§ 1-6: See note following RCW [18.86.120](#).

Effective date -- 1997 c 217 §§ 1-6 and 8: See note following RCW [18.86.020](#).

RCW 18.86.080

Compensation.

(1) In any real estate transaction, a firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between firms.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the broker.

(3) A seller may agree that a seller's agent's firm may share with another firm the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent's firm may share with another firm the compensation paid by the buyer.

(5) A firm may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A firm may receive compensation based on the purchase price without breaching any duty to the buyer or seller.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a broker to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer.

[2013 c 58 § 9; 1997 c 217 § 6; 1996 c 179 § 8.]

Notes:

Real estate agency pamphlet -- 1997 c 217 §§ 1-6: See note following RCW [18.86.120](#).

Effective date -- 1997 c 217 §§ 1-6 and 8: See note following RCW [18.86.020](#).

RCW 18.86.090

Vicarious liability.

(1) A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:

(a) Unless the principal participated in or authorized the act, error, or omission; or

(b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.

(2) A broker is not liable for an act, error, or omission of a subagent under this chapter, unless that broker participated in or authorized the act, error or omission. This subsection does not limit the liability of a firm for an act, error, or omission by a broker licensed to the firm.

[2013 c 58 § 10; 1996 c 179 § 9.]

RCW 18.86.100

Imputed knowledge and notice.

(1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a broker does not have knowledge or notice of any facts known by a subagent that are not actually known by the broker. This subsection does not limit the knowledge imputed to the designated broker or any managing broker responsible for the supervision of the broker of any facts known by the broker.

[2013 c 58 § 11; 1996 c 179 § 10.]

RCW 18.86.110

Application.

The duties under this chapter are statutory duties and not fiduciary duties. This chapter supersedes the fiduciary duties of an agent to a principal under the common law. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a broker while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly.

[2013 c 58 § 12; 1996 c 179 § 11.]