2024/2025 CURRENT
ISSUES IN WASHINGTON RESIDENTIAL REAL ESTATE

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1 WAC 308-124H-850(1)

Washington Real Estate Residential Course

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Topic Area I: Forms Updates 1 hour

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

Educational Objective 1: Forms Update

Identify and discuss the forms that are currently causing issues for agents in the field, emphasizing purpose, standards of practice, and pitfalls, as well as specific loan program updates affecting the industry.

Changes and updates in approved courses.

(1) Course materials shall be updated no later than thirty days after the effective date of a change in federal, state, or local statutes or rules. Course materials shall also be updated no later than thirty days after changes in procedures or other revisions to the practice of real estate which affect the validity or accuracy of the course material or instruction.

(2) Changes in course instructors may be made only if the substitute instructors are currently approved to teach the topic area pursuant to chapter **308-124H** WAC.

Specifically, the learner will know and be able to effectively utilize the following forms in a residential real estate transaction where appropriate:

a. Escalation Addendum (10 Min)

- Benefits and pitfalls of an escalation provision from the buyer and sellers' side to include when it is appropriate to use an escalation addendum and when it may not be appropriate to use, and how to identify when the benefits outweigh the disadvantages in a transaction and how to use this tool correctly.

Benefits and pitfalls of the Escalation Clause

In a "seller's market" where properties are selling quickly and there is high competition to purchase a property, a potential buyer may want to include with the purchase agreement, an escalation clause. An escalation clause, or escalator, is a clause in purchase agreement that lets a property buyer offer to pay $X, BUT, if the seller receives another offer that's higher than this buyer's offer, this buyer agrees to increase his/her offer to a higher price of $Y.

This can be a very helpful tool to help a buyer in a competitive market, but there are also many details involved with this clause that could be potential pitfalls

How does an escalation clause work? While escalation clauses can be written in many different ways,
the basic components of a general escalation include:
1. The original offer of purchase price
2. The price to be escalated above any other competitive bid
3. The maximum amount that the purchase
price can reach in case of multiple offers

Example Mr. and Mrs. Smith's offers $300,000 to purchase a home. They are very motivated to buy this house, so they ask their broker to include an escalation clause that, in the case of a higher competing
offer, will increase Smith's offer in increments of $2,000 above the competing offer. They want the escalation clause to go up to a maximum of $320,000. But, if no other competing offers
are submitted, the Smith's offer remains at $300,000. In this example, buyer Jones also wants this house and offers the seller $310,000, So the Smith's offer automatically escalates by $2,000 above their offer,
bringing Smith's offer to $312,000. Then, another offer comes in from the William's, who offer
$325,000 for the home, Because the Smith's maximum of $320,000 is exceeded, and it is higher than the
Jones' offer, the William's now have the top offer.

In some cases, the sellers may choose not to accept offers with an escalation clause, prefer that every
buyer makes their offer with the exact price they're willing to pay. But, in many cases sellers prefer to
have offers with the escalation clause as it can motivate multiple buyers to outbid one another, and
speeding the decision-making process and paperwork.

Multiple Offers

Unless there is apparent reason, such as a highly competitive seller's market, it may not be wise to
include an escalation clause. The escalation clause should only be used when the buyer is realistically concerned that there will be multiple offers, or when
the buyer is highly motivated and expects to pay a higher price than he original offered price.

This is because the buyers who submit an offer with an escalation clause are letting the seller know upfront, the maximum price the buyer is offering for the property.

So, if there are no other offers, the seller can accept the offered price, but since the seller can see in the escalation clause that the buyer would pay more if there were competing offers, the seller is likely to make a counteroffer to the buyer at a higher, escalated price. The seller is not guaranteed the buyer will agree to the higher counter-offer, as the price is not automatically escalated (being no competing offers). But the seller can see the maximum price in the escalation clause, which implies that they likely will.

In this kind of situation, the buyer is giving up negotiating power and is potentially leaving money on the table when using an escalation clause with no competitors.

One-day Review vs Multiple Rounds of Offers

In a seller's market, it may be wise for the seller to include a form of "offer-review" process in the listing agreement. For example, if the property is listed on Monday, all offers will be reviewed the following Wednesday and the seller and their broker will make the final decision on that day, rather than on the actual day they are submitted. This kind of review process is ideal for the escalation clause, so that a motivated buyer has the chance to automatically outbid other offers instead of the all-or nothing type offer.

Another variation of the review process is for the sellers to take a back-and-forth approach, collecting offers from buyers for one week, and then respond to the best offers saying "Send us your highest and best offer."

However, this technique is not favored by many buyers and brokers because of its lack of clarity. Before writing an offer on a property with this kind of review process, it is wise for the buyer's broker to inquire as to the specific details and make sure the buyer is aware and prepared for this kind of review process.

It is legal for a seller's broker, with the seller's permission, to reveal to all potential buyers what the top initial offer is, and to ask everyone to beat it. But, including an escalation clause on the initial offer in

this kind of multistage situation often places the buyer in a weak position in the second round, because
the escalation clause reveals the buyer's maximum offer.

Escalation clauses can cause a lot of stress for home buyers. As a buyer’s broker it is best to first
research the circumstances of the seller's process of reviewing offers, and advise buyers snot to be
tempted to escalate their maximum offer price above what they are comfortable paying. At the same
time, if inventory and interest rates are low, aggressively pursuing a desired property at a good price is
necessary for their offer to be accepted.

It is important for the listing broker to attach a complete copy of the competing offer anytime a seller
accepts a buyer's escalation offer and escalates the price. The better and clearer approach for the seller
is to counter the buyer's offer with a purchase agreement that establishes a fixed price and eliminates
the escalation addendum.

The listing broker should still provide the buyer with a copy of the competing offer to justify seller's
Counter-offer, but this process makes the delivery of the offer part of the negotiation and not a contract
until or unless accepted by the buyer.

b. Evidence of Funds (10 Min)

• Students will gain competency in using evidence of funds on all transactions (unless buyer is required to provide no cash for closing).

Evidence of Funds

The listing broker can protect the seller's interests by including in the listing that buyers

sign Form 22EF "Evidence of Non-Contingent Funds", the form that indicates that the buyer has the funds for the down payment and closing.
If buyer has a Form 22A in the agreement, there is a contingency protecting buyer if buyer is unable to get financing. But, almost every buyer is required to bring some amount of cash to closing, such as cash for a down payment and/or closing costs.

Paragraph 1 of Form 22EF requires the buyer to prove to the seller that he/she has the required cash to bring to closing and is not relying on a gift, or the sale of personal

property or some other contingent method to fund the down payment and buyer's closing costs.

If buyer is unable to prove that he/she possesses the required cash, then the seller may terminate the transaction instead of having to wait for the sale to fail.

On the other hand, if the buyer IS relying on a contingent source of funds for the down payment or closing costs, then the buyer should use Form 22EF, paragraph 2 to identify that contingent source of funds and allow seller to accept or reject the offer based on this disclosure.

Form 22EF protects the seller by requiring the buyer to prove his/her ability to pay the down payment and closing cost before accepting the offer, and in essence, removing the property from the market.

The amount of earnest money should be substantial, so that the buyer is committed to the sale. If a small amount is accepted, the buyer could potentially find another

property and walk away from the sale losing only a small amount, leaving the seller with lost time, and potential buyers.

It is the seller's decision, not listing broker, whether a counteroffer is made and what terms are included in the counteroffer, but sellers advised by their listing brokers of the benefits of Form 22EF are wise to accept this advice.

Sales Involving Contingent Buyers and complexity of buyer selling current house to purchase seller's property

Inspection Clause

Including contingencies to a real estate sales contract is standard procedure in most cases, and a home inspection clause is one of the more common ones. This clause gives the buyer a way to exit the contract if the home inspector finds major problems with the house, such as electrical issues or a leaking roof.

There are several elements a buyer should include when writing the contingency, but the seller should also be prepared to add wording that can keep the sale moving forward.

Buyer Considerations

The buyer can benefit from adding a plan for a quick exit from the contract if the home inspector finds problems.

For example, the contract could be immediately voided by the buyer if the home inspector turns up issues with the house. But the buyer should be prepared to negotiate, as some sellers want to have the right to repair the problems or wish to define which problems can lead to a voided contract, such as plumbing or electrical issues.

Another protective measure is to include wording that allows the buyer to exit the contract if big-ticket items are found to be at the end of their useful life. This usually applies to items that will cost several thousand dollars to replace such as a roof or furnace. It is also important to establish a reasonable time frame to complete the inspection, such as 10 -14 days. If the seller wants a fast inspection period, such as five days from the date you sign the contract, the buyer will need to quickly hire an inspector, and possibly have to pay a rush fee to come out within this limited time. The time frame typically means you have a specific number of days from the contract signing date to

provide a written inspection report to the seller, which sometimes takes the inspector a couple of days to prepare. A longer time frame allows the buyer to shop for the best inspector that fits into their budget and to receive the report in a timely fashion.
The buyer can benefit by making sure that this clause specifies that the entire house is to be inspected, rather than just selected systems such as electrical and plumbing, and that the seller make all areas of the house available for inspection, including the attic, to look for wiring or moisture issues.

Seller Considerations

The seller can benefit by including a clause in the contingency that allows the seller to have the right to cure any issues the home inspector finds and set a base price limit. For example, you may write in the clause that the buyer is responsible to fix any problems that are estimated to cost less than $500, while the seller has the option to repair more expensive issues.

This means that the seller is not obligated to fix them but has the opportunity to do so if they want the sale to continue. If the seller chooses not to make the repairs, he/she can void the contract or allow the buyer to do so.

Sellers can protect themselves from shoddy work or ridiculous repairs, by requiring that the home inspector be licensed, and that he not be employed or related to the buyers.

Wording should be included that allows the seller the opportunity to decrease the price of the house instead of paying for a repair. For example, if a roof repair is estimated at $1000, to decrease the cost of the house by $1000 in place of paying for the repair out of hand.

However, the buyer might prefer instead to have that money given to him/her at closing, so this may be an issue to be negotiated, and giving the buyer credit or cash back at

closing can often be easier for the seller than making the repairs. And, sometimes, bigger problems are discovered once the repair begins, such as water damage in a subfloor under warped floorboards, or other surprises that can increase the cost significantly.

Terms of closing and possession (10 Min)

Closing and possession refers to the legal transfer of ownership from the seller to the buyer. When the sale is recorded with the local government, and the purchase funds have been received by the seller ownership of the home is transferred to the buyer and the buyer has the right to possess the home.
Alternatively, it's possible for the buyer to take possession of the home before or after the sale closes. For instance, the buyer may request to move into the home before the sale closes in order to start repairing the home. Or the seller may request some extra time in the home after the sale to complete their move.

When a homebuyer asks the seller to grant early possession before closing occurs it is usually because their apartment lease has ended or their old home has already sold, and they need a place to live immediately.

Sellers make the final decision as to whether an early possession makes sense for their transaction, but most listing agents discourage such situations because too many things can go wrong.

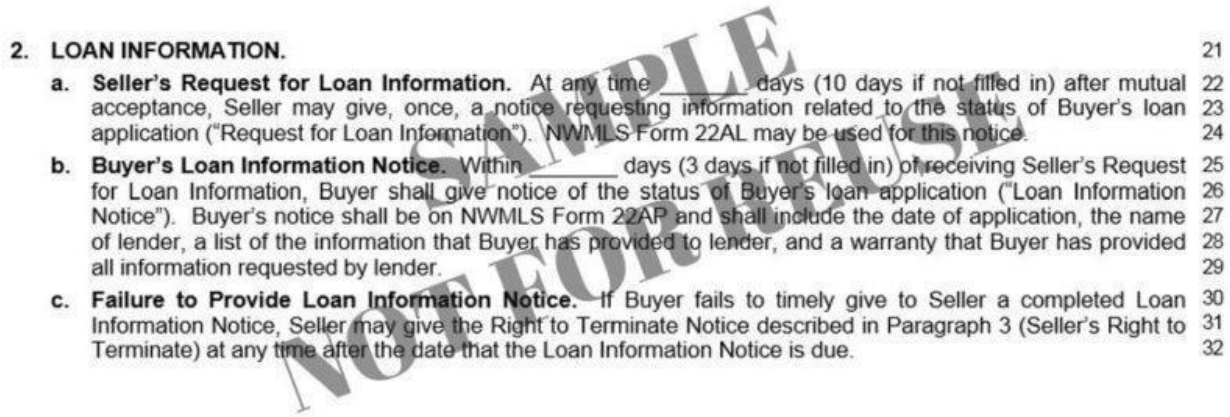
Having the possession date fall before or after the sale closes can result in some sticky legal situations for both buyers and sellers. If a buyer moves in early, and the sale does not go through, the seller may be forced to evict.

On the other hand, if the seller asks to stay in the home for some time after the purchase completes, the buyer will usually collect rent from the seller, and will need to make sure that the seller moves out in time for the buyer to move in. Caution should be exercised anytime the right of possession does not coincide with closing.

Financing Continency Addendum and Additional Down Payment Addendum (10 Min)

When financing your home purchase, the home buyer needs to give vital information to the home seller. The Financing Addendum sets forth check box and fill in options so both parties are aware of what is clear and binding.

PARAGRAPH 1 – LOAN APPLICATION/WAIVER OF CONTINGENCY



2. **LOAN INFORMATION.**

a. **Seller's Request for Loan Information.** At any time _____ days (10 days if not filled in) after mutual acceptance, Seller may give, once, a notice requesting information related to the status of Buyer's loan application ("Request for Loan Information"). NWMLS Form 22AL may be used for this notice.

b. **Buyer's Loan Information Notice.** Within _____ days (3 days if not filled in) of receiving Seller's Request for Loan Information, Buyer shall give notice of the status of Buyer's loan application ("Loan Information Notice"). Buyer's notice shall be on NWMLS Form 22AP and shall include the date of application, the name of lender, a list of the information that Buyer has provided to lender, and a warranty that Buyer has provided all information requested by lender.

c. **Failure to Provide Loan Information Notice.** If Buyer fails to timely give to Seller a completed Loan Information Notice, Seller may give the Right to Terminate Notice described in Paragraph 3 (Seller's Right to Terminate) at any time after the date that the Loan Information Notice is due.

By attaching this addendum to the Purchase and Sale Agreement, the home buyer is making it a condition they are obtaining a loan or loans to purchase the Property.

Check box items and areas to fill in are included in sub paragraph (a) and must be identified to inform all parties the following:

- Type of Loan the Buyer will be obtaining
    - Conventional (First)
    - Conventional (Second)
    - Bridge
    - VA
    - FHA
    - USDA
    - HELOC (Home Equity Line of Credit)
    - Other
- The Buyer's down payment amount

- This can be a fixed amount
- Or; a percent of the Purchase Price

This information as well as the actual application for the type of loan or loans must be made within an agreed upon time frame. This time frame defaults to 5 days and the term ‘application’ means the submission of Buyers’ financial information for the purposes of obtaining an extension of credit including:

- Buyer’s Name(s)
- Income
  Security Number (if required)
- Property Address
- Purchase Price
- Loan amount

The Financing Addendum clearly sets a waiver in sub paragraph b if Buyer:

- Fails to make application for financing for the Property within the agreed time line
- Changes the type of loan at any time without Seller’s prior WRITTEN consent
- Changes the lender without Seller’s prior WRITTEN consent after the agreed upon time to apply for financing expires

If any of these 3 above items occur, then the Financing Contingency shall be deemed waived! This is clearly not in the best interest of the Buyer as waiver of this contingency also waives the Appraisal Less Than Sales Price paragraph which I will identify later in this post.

PARAGRAPH 2 – LOAN INFORMATION

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This paragraph is put in place as a mechanism of communication so the Seller (and Buyer) are kept informed as to the state of the Buyers loan status. There are 2 Forms that are used to obtain this:

(a) Request for Loan Information.

This form may be given to the Buyer any time after an agreed upon time frame, 10 days by default, after mutual acceptance.

(b) Loan Information Notice.

The Buyer has an agreed upon time frame to give Seller notice, 3 days by default, and include the following:

- Date of Application
- Name of Lender
- A List of information that Buyer has provided to Lender
- And a warranty that Buyer has provided all information requested by Lender

.

PARAGRAPH 3 – SELLER'S RIGHT TO TERMINATE

This paragraph is put in place as a mechanism of communicating to the Buyer of the Sellers intent to terminate.

This is the Seller's recourse in the event buyer is unable or unwilling to give notice of waiver of the Financing Contingency

It's also a paragraph that contains information many real estate brokers may not be aware that 'technically' gives the Buyer a right to rescind even after the closing date (if the transaction fails to close based on a hold up in the financing process).

IF THE SELLER DOES NOT ELECT TO TERMINATE BY WRITTEN NOTICE DURING THE COURSE OF THE TRANSACTION, AND THE BUYER FULFILLS THEIR OBLIGATIONS TO MAKE APPLICATION WITHIN THE AGREED UPON TIME FRAME, THE FINANCING CONTINGENCY SHALL SURVIVE THE CLOSING DATE.

As you can see, the first two options are in order of how the parties can and will proceed. First, the Seller will give notice of their option to terminate the agreement any time 3 days after delivery. You still see some ambiguity in the language as this option says that the Seller **MAY** terminate as well as **ANY TIME** after 3 days after delivery.

The second option may be used if the first option is unanswered by the Buyer. The Seller may also elect to skip the first option.

If option one is successful for the Seller, the Buyer does have the option in this notice to waive their financing contingency.

PARAGRAPH 4 – LOAN COST PROVISIONS

This paragraph is to identify if the Seller is going to apply any amount or percentage of the purchase price to the Buyers loan and settlement costs…these may include:

- Prepaids
- Loan Discount
- Loan Fee
- Interest Buydown
- Financing
- Closing Costs
- Or, any Settlement Costs allowed by the Buyers Lender

PARAGRAPH 5 – EARNEST MONEY

In paragraph 5, line item 50, the language keeps the Buyers Earnest Money should they be unable to obtain financing and fail to close after a good faith effort. Of course, the Buyer must produce written confirmation from their lender stating the following:

(a) The date of the Buyers loan application

(b) Buyer did have sufficient funds to close

(c) And the reason why the Buyer was unable to obtain financing

PARAGRAPH 6 – INSPECTION

PARAGRAPH 7 – APPRAISAL LESS THAN SALE PRICE

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7. APPRAISAL LESS THAN SALE PRICE.

a. Notice of Low Appraisal. If lender's appraised value of the Property is less than the Purchase Price, Buyer may, within 3 days after receipt of a copy of lender's appraisal, give notice of low appraisal, which shall include a copy of lender's appraisal. NWMLS Form 22AN may be used for the notices in this Paragraph 7.

b. Seller's Response to Notice of Low Appraisal. Seller shall, within 10 days after Buyer's notice of low appraisal, give notice of:

(i) A reappraisal or reconsideration of value, at Seller's expense, by the same appraiser or another appraiser acceptable to lender, in an amount not less than the Purchase Price. Buyer shall promptly seek lender's approval of such reappraisal or reconsideration of value. The parties are advised that lender may elect not to accept a reappraisal or reconsideration of value;

(ii) Seller's consent to reduce the Purchase Price to an amount not more than the amount specified in the appraisal or reappraisal by the same appraiser, or an appraisal by another appraiser acceptable to lender, whichever is higher. (This provision is not applicable if this Agreement is conditioned on FHA, VA, or USDA financing. FHA, VA, and USDA financing does not permit the Buyer to be obligated to buy if the Seller reduces the Purchase Price to the appraised value. Buyer, however, has the option to buy at the reduced price.); or

(iii) Seller's rejection of Buyer's notice of low appraisal.

If Seller timely delivers notice of reappraisal, reconsideration of value, or consent to reduce the Purchase Price, and lender accepts Seller's response, then Buyer shall be bound by Seller's response.

c. Buyer's Reply. Buyer shall have 3 days from either Seller's notice of rejection of low appraisal or, if Seller fails to respond, the day Seller's response period ends, whichever is earlier, to (a) waive the Financing Contingency or (b) terminate the Agreement, in which event the Earnest Money shall be refunded to Buyer. Buyer's inaction during this reply period shall result in termination of the Agreement and return of the Earnest Money to Buyer. The Closing date shall be extended as necessary to accommodate the foregoing times for notices.

If the appraisal comes back below value, then the Buyer would issue a Notice of Low Appraisal.

There are 5 options on this notice, the first of which is specific to the Buyer.

Once this notice has been given to the Seller, they (the seller) now have 3 options to address the low appraisal:

REAPPRAISAL/RECONSIDERATION OF VALUE

There are good reasons for having your home appraised prior to listing it. The first of which is you have an appraisal in hand at value…considering you listed your home and accepted an offer at or below the appraised value. Secondly, this would be a great tool if the seller is concerned about their value or simply unsure of what the value of their home is.

REDUCTION IN PURCHASE PRICE

Here the seller has the simple option of reducing the purchase price to the appraised value.

REJECTION OF LOW APPRAISAL

This course of action may be taken in the event they (the Seller) do not want to allow for a reappraisal or reduction in purchase price. I'd also take this response from the sellers to mean they may have another Buyer or an all cash offer of some kind in the wings!

PARAGRAPH 8 – FHA/VA/USDA – APPRAISAL CERTIFICATE

PARAGRAPH 9 – EXTENSION OF CLOSING Another provision protecting the Buyer in the event the Lender is required by 12 CFR 1026 or Regulation Z to give a corrected disclosure based on the following:

(a) A change in the APR of Buyers Loan by more than .125% of a fixed rate loan or .250% for an adjustable rate loan

(b) A change in the loan product

(c) Or an addition of a prepayment penalty

Home Sale Contingency

The sale of the buyer's current home is a common contingency clause frequently included in an offer to purchase real estate. With a home sale contingency, the closing of the transaction depends upon the sale of the buyer's home.
If the buyer's house sells by the specified date, the contract and closing moves forward. But, if it doesn't sell by the specified date, the contract is terminated.

In a Sale and Settlement (closing) Contingency, as the name implies, the sale closing is dependent upon the buyer selling and settling an existing home. It is commonly used when the buyer has not yet received and accepted an offer to purchase on the current home.

This kind of contingency allows the seller to continue to market the home to other potential buyers, with the stipulation that the buyer will be given the opportunity to remove the sale and settlement contingency within the specified period (typically 24-48 hours) if the seller receives another offer.

If the buyer cannot remove the contingency, the contract is terminated, the seller can accept the other offer, and the earnest money deposit is returned to the buyer.

A Settlement (closing) Contingency is used when the buyer has already accepted an offer on his/her property, has a contract in hand and a settlement (closing) date scheduled. But, because the sale has not yet closed, this clause protects the buyer if the sale falls through for any reason.

In most cases, unless in writing and mutually agreed, this type of contingency prohibits the seller from accepting other offers on the property for a specified period. If the buyer's home closes by the specified date, the contract remains valid. If the home does not close, the contract can be terminated.

Considerations for Buyers

Buyers often need to sell their current home in order to free up their equity to purchase a new home, especially when buying a more expensive house. A sale contingency gives the buyer time to sell and close before committing to closing of the new home and avoid owning two homes and having two mortgages at one time.

The home sale contingency can bring peace of mind to the buyer, but it doesn't avoid other costs of home buying. Buyers must still pay for inspections, bank fees, and appraisal fees, which are usually not refunded if the sale falls through due to their property not selling on time.

In addition, the buyer often has to pay more for the property than if they made the offer without the home sale contingency. This is because they are essentially asking the seller to take the risk on the buyer's ability to sell their current home, a factor outside of the seller's control.

Considerations for Sellers

A home sale contingency can be risky to the seller because there is no guarantee that the buyer's home will sell. Even if the sales agreement allows the seller to continue to market the property and accept offers, the house is usually listed as "under contract," or "sold on contingency," making it less attractive to other potential buyers.

Many people looking for homes will avoid making an offer on a property that is sold with a contingency, because they don't want to waste their time or risk the disappointment of losing a property they became attached to.

Before agreeing to a home sale contingency, the seller's broker should investigate the potential buyer's current home to determine if the home is already on the market, and if it is listed at a marketable price.

If it is not listed, this could be a red flag indicating the potential buyer is not serious. If it's listed, is it priced competitively and how long it has been on the market? If it has been longer than average sale time for the area, the home may be priced too high, or the showing procedure may be difficult.

On the other hand, accepting an offer with a home sale contingency might be beneficial if the seller's property has been on the market a long time. If the seller has had trouble finding a buyer, a sale with a contingency gives an opportunity that the property will sell. In many cases, it is advisable to limit the amount of time the buyer has to sell his or her home to 1-4 weeks.

A limited time frame can motivate the buyer to adjust the list price to attract more buyers, and help the seller avoid losing time and potential qualified buyers in the event that the transaction does not close.

A seller can also include a clause that allows the seller to continue to market the property and accept offers from other buyers, giving the current buyer a specified amount of time (such as 72 hours) to remove the home sale contingency and continue with the contract. If the buyer does not remove the contingency, the seller can back out of the contract and sell to the new buyer.
Home sale contingencies protect buyers who want to sell one home before purchasing another. To protect the interests of both buyer and seller, the exact details of any contingency must be specified in the real estate sales contract. Because contracts are legally binding, it is important for all parties to review and understand the terms of a home sale contingency.

TOPIC AREA II: LEGISLATIVE UPDATE 30 minutes

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

1. **Reforming real estate agency law**

SSB 5191: This bill requires written brokerage services agreements, improves consumer
disclosures, and provides that certain legal duties of brokers apply to all parties in the transaction. A proposed amendment which would:

i. Create a default buyer agency term of 12 months, but allow a buyer/broker to agree to a different length of term in writing and
ii. Clarifies the difference between “exclusive” and “non-exclusive” for consumers. Effective date: January 1, 2024.
iii. Disclosure and Agency Relationships

Agency Relationship
In an agency relationship, a broker is referred to as an “agent” and the seller/landlord and buyer/tenant is referred to as the “principal.” For simplicity, in this pamphlet, seller includes landlord, and buyer includes tenant.

For Sellers
A real estate firm and broker must enter into a written services agreement with a seller to establish.
an agency relationship. The firm will then appoint one or more brokers to be agents of the seller.
The firm’s designated broker and any managing broker responsible for the supervision of those
brokers are also agents of the seller.

For Buyers
A real estate firm and broker(s) who perform real estate brokerage services for a buyer establish
an agency relationship by performing those services. The firm’s designated broker and any
managing broker responsible for the supervision of that broker are also agents of the buyer. A
written services agreement between the buyer and the firm must be entered into before, or as
soon as reasonably practical after, a broker begins rendering real estate brokerage services to
the buyer.

For both Buyer and Seller - as a Limited Dual Agent
A limited dual agent provides limited representation to both the buyer and the seller in a transaction.
Limited dual agency requires the consent of each principal in a written services agreement and
may occur in two situations: (1) When the buyer and the seller are represented by the same
broker, in which case the broker’s designated broker and any managing broker responsible for the
supervision of that broker are also limited dual agents; and (2) when the buyer and the seller are

represented by different brokers in the same firm, in which case each broker solely represents
the principal the broker was appointed to represent, but the broker's designated broker and any
managing broker responsible for the supervision of those brokers are limited dual agents.

Duration of Agency Relationship
Once established, an agency relationship continues until the earliest of the following:
1. Completion of performance by the broker;
2. Expiration of the term agreed upon by the parties;
3. Termination of the relationship by mutual agreement of the parties; or
4. 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.

A Broker's Duties to All Parties
A broker owes the following duties to all parties in a transaction:
1. To exercise reasonable skill and care;
2. To deal honestly and in good faith;
3. To timely present all written offers, written notices, and other written communications to and from
either party;
4. To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a
party. A material fact includes information that substantially adversely affects the value of the property
or a party's ability to perform its obligations in a transaction, or operates to materially impair or defeat
the purpose of the transaction. However, a broker does not have any duty to investigate matters that the
broker has not agreed to investigate;
5. To account in a timely manner for all money and property received from or on behalf of either party;
6. To provide this pamphlet to all parties to whom the broker renders real estate brokerage services and
to any unrepresented party;
7. To disclose in writing who the broker represents; and
8. 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.

A Broker's Duties to the Buyer or Seller
A broker owes the following duties to their principal (either the buyer or seller):

1. To be loyal to their principal by taking no action that is adverse or detrimental to their principal's interest
in a transaction;
2. To timely disclose to their principal any conflicts of interest;
3. To advise their principal to seek expert advice on matters relating to the transaction that are beyond the
broker's expertise;
4. To not disclose any confidential information from or about their principal; and
5. To make a good faith and continuous effort to find a property for the buyer or to find a buyer for the seller's property,
until the principal has entered a contract for the purchase or sale of property or as agreed otherwise in writing.

Written Services Agreement
A written services agreement between the firm and principal must contain the following:
1. The term (duration) of the agreement;
2. Name of the broker(s) appointed to act as an agent for the principal;
3. Whether the agency relationship is exclusive (which does not allow the principal to enter into an agency
relationship with another firm during the term) or nonexclusive (which allows the principal to enter into
an agency relationship with multiple firms at the same time);
4. Whether the principal consents to limited dual agency;
5. The terms of compensation;
6. 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
7. Any other agreements between the parties.

Limited Dual Agent Duties
A limited dual agent may not advocate terms favorable to one principal to the detriment of the other principal.
A broker, acting as a limited dual agent, owes the following duties to both the buyer and seller:
1. To take no action that is adverse or detrimental to either principal's interest in a transaction;
2. To timely disclose to both principals any conflicts of interest;
3. To advise both principals to seek expert advice on matters relating to the transaction that are beyond
the limited dual agent's expertise;
4. To not disclose any confidential information from or about either principal; and
5. To make a good faith and continuous effort to find a property for the buyer and to find a buyer for the
seller's property, until the principals have entered a contract for the purchase or sale of property or as

agreed otherwise in writing.

Compensation
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. To receive compensation from any party, a firm must have a written services
agreement with the party the firm represents (or provide a "Compensation Disclosure" to the buyer in a transaction
for commercial real estate).
A services agreement must contain the following regarding compensation:
1. The amount the principal agrees to compensate the firm for broker's services as an agent or limited dual agent;
2. The principal's consent, if any, and any terms of such consent, to compensation sharing between firms
and parties; and
3. The principal's consent, if any, and any terms of such consent, to compensation of the firm by more
than one party.
Short Sales A "short sale" is a transaction where the seller's proceeds from the sale are insufficient to cover seller's obligations at closing (e.g., the seller's
outstanding mortgage is greater than the sale price). If a sale is a short sale, the seller's real
estate firm must disclose to the seller that the decision by any beneficiary or mortgagee, to release its interest in the property for less than the amount the seller owes to allow the
sale to proceed, does not automatically relieve the seller of the obligation to pay any debt or
costs remaining at closing, including real estate firms' compensation

4. Review the most recent legislation and the effect that it has on the daily practice of real estate activities.

HB 1042: Concerning the use of existing buildings for residential purposes.
Is currently in committee, and public hearings took place on January 10 and 19, 2023. It was clear at the January 10 hearing that there is some concern over the extent of the exemptions and the ability of local jurisdictions to impose local building, permitting, safety, and health requirements. Therefore, the text of this bill will likely evolve.
Raising area median income limits for public housing authority financed, low-income development.
This bill would change a public housing authority's ability to partner with private developers to finance low-income housing development. Under RCW 35.82.070, housing authorities can finance low-income housing development by partnering with a for-profit entity, but the low-income

housing portion of the development must be rented to households whose incomes do not exceed 50% of the area median income (AMI). For partnerships with governmental entities, the low-income housing portion of the development must be rented to households whose incomes do not exceed 60% of the AMI. Advocates of the bill argue that rising rents and inflation have made the 50% and 60% figures infeasible for both housing authorities and developers. This bill would increase those percentages considerably with the following changes:

From 50% to 80% for developments owned by for-profit entities.
From 60% to 80% for developments owned by a governmental entity or nonprofit, either directly or through a partnership.
HB 1046 is currently in committee. Public hearings took place on January 10 and 16, 2023.

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

HB 1070:
Exempting the sale and leaseback of property by a seller form the residential landlord-tenant act when the seller agrees to written lease at closing**.**

HB 1074: Addressing documentation and processes governing landlord's claim for damage to residential premises.
What the bill does:
Extends the timeline for a landlord to provide a statement and documentation for retaining any portion of a tenant deposit from 21 days to 30 days.
Requires a landlord to substantiate the cost of any damages withheld from a tenant deposit with repair estimates, invoices, or other documentation.
Prohibits a landlord from withholding any portion of a tenant deposit for certain items.
Establishes a three-year statute of limitations (original version was one year) for a landlord to take any action against a tenant to recover sums exceeding the amount of the damage deposit.

HB 1110: Increasing middle housing in areas traditionally dedicated to single family detached housing.
Title: An act relating to creating more homes for Washington by increasing middle housing in areas traditionally dedicated to single-family detached housing. Brief Description: Increasing middle housing in areas traditionally dedicated to single-family detached housing.

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

HB 1181 makes significant changes to the Growth Management Act (GMA) to incorporate climate change into local government comprehensive plans.

In addition to adding a 14th planning goal related to climate change and resiliency and a 15th goal related to shorelines, it makes changes to the mandatory land use and transportation elements and adds a new climate change element.

Key changes for the land use element are as follows:

It designates the proposed general distribution, location, and extent of green spaces and forests within the urban growth area (UGA).
It gives special consideration to environmental justice, including efforts to avoid creating or worsening environmental health disparities.
It suggests urban planning approaches that reduce vehicle miles traveled without increasing greenhouse gases elsewhere in the state.
It reduces and mitigates the risk to lives and property posed by wildfires by using land use planning tools.
Key changes for the transportation element are as follows:

It incorporates multimodal level of service into land use assumptions used in estimating travel.
It incorporates active transportation facilities and multimodal level of service, consistent with environmental justice goals, into facilities and services needs.
It prioritizes future facilities and services that will provide the greatest multimodal safety benefit within forecasts of multimodal transportation demand and needs that inform the transportation element.
A new element addressing climate change
HB 1181 also introduced a new climate change and resiliency element, which includes sub-elements for greenhouse gas emissions reduction and for resiliency.

The greenhouse gas emissions reduction sub-element is mandatory for the state's 11 most populous counties and their cities (6,000 population and above as of April 1, 2021, per Office of Financial Management estimates). It is encouraged for all other jurisdictions.

Deadlines for these new requirements start soon for the 11 largest counties (and certain cities), as outlined below (June 30 of each deadline year):

2025: Clark, Skagit, Thurston, and Whatcom
2026: Benton, Franklin, and Spokane
2029: King, Kitsap, Pierce, and Snohomish (These four are only required to update the transportation element and add a climate element.)
This sub-element and its related development regulations must identify actions the jurisdiction will take during the planning cycle that are consistent with the Washington State Department of Commerce's (Commerce) early Climate Element Planning Guidance, which will result in reduced greenhouse gas emissions and vehicle miles

traveled. These actions must also prioritize reductions that benefit overburdened communities to maximize the co-benefits of reduced air pollution and environmental justice.

The resiliency sub-element is mandatory for all counties and cities fully planning under the GMA, and it is encouraged for all other jurisdictions. This sub-element must include goals, policies, and programs that identify, protect, and enhance natural areas and communities to foster resiliency to climate impacts and address natural hazards created or exacerbated by climate change. A natural hazard mitigation plan or similar plan that meets certain requirements may be adopted by reference to satisfy this sub-element.

More information, including funding (to be announced), is available on Commerce's Climate Program webpage. The Climate Element Planning Guidance, linked on this webpage, is expected to be updated by the end of the year to reflect the new legislation.

In addition to Commerce's guidance, MRSC's Climate Change series may also serve as a useful resource as local governments incorporate these new requirements into their comprehensive plans. For example, our Local Government Climate Change Documents webpage includes several examples of climate action plans, hazard mitigation plans, and comprehensive plans with goals and policies related to climate change and greenhouse gas emissions. We expect to continue updating this and other MRSC climate-related webpages with additional examples in the weeks and months to come.

Impact Fee Revenues for Bicycle and Pedestrian Facilities

Thanks to changes brought about in SB 5452, fully planning jurisdictions may spend transportation impact fee revenues on certain pedestrian and bicycle facilities in addition to public streets and roads. The bill amends the definition of public facilities to add "bicycle and pedestrian facilities that were designed with multimodal commuting as an intended use."

In adopting this bill, the legislature noted that these options provide numerous benefits, including greenhouse gas emissions reductions and connections between communities and job centers.

Clean Energy Siting

Per HB 1216, an optional, fully coordinated permit process is established for clean energy projects that don't apply to the Washington State Energy Facility Site Evaluation Council under RCW 80.50. Clean energy projects are defined in the new legislation and include clean energy product manufacturing facilities, electrical transmission facilities, and biomass energy facilities as defined in RCW 19.405.020.

The intent of this optional process is to provide more efficient and effective siting and permitting of new clean energy projects throughout the state to reduce greenhouse gas emissions, improve air quality, and provide clean energy jobs, among other benefits.

As part of the process, the Washington State Department of Ecology (Ecology) will conduct an initial assessment of the proposed project review and permitting actions for coordination purposes, ensure the proponent has been informed of all information needed to apply for relevant state and local permits, facilitate communication between project proponents and agency staff, and manage a fully coordinated permitted process. The initial assessment, which is required to be completed within 60 days of the request, will be documented in writing, provided to the project proponent, and made available to the public.

A few key points for local governments include:

Counties and cities with clean energy projects determined as eligible for the fully coordinated permit process are required to enter into an agreement with Ecology or the project proponents for expedited project completion.
During project review for the construction or improvement of electric power facilities, a local government may not require an applicant to demonstrate its necessity or utility, other than to require as part of the application documentation required by federal agencies or the utilities and transportation commission.
Counties may not prohibit the installation of wind and solar resource evaluation equipment necessary for the design and environmental planning of a renewable energy project.
State Environmental Policy Act Exemptions for Housing
HB 5412 expands the infill development State Environmental Policy Act (SEPA) categorical exemption to include residential housing units, primarily to reduce local governments' land use permitting workloads; thereby facilitating more housing development. Key points of the bill include:

All project actions with one or more residential housing units that meet certain criteria within incorporated urban growth areas (UGAs) or middle housing (see the definition of middle housing as noted in HB 1110) within unincorporated UGAs are categorically exempt from SEPA.
Cities and counties are required to prepare an analysis for the exempted project that analyzes multimodal transportation impacts and includes documentation that the requirements for environmental analysis, protection, and mitigation have been adequately addressed. The requirements may be addressed in comprehensive plans; subarea plans; development regulations; or other applicable local, state, and federal regulations.
Prior to finalizing the analysis, an agency is required to give a minimum of 60 days' notice to affected tribes, relevant state agencies, other jurisdictions that may be impacted, and to the public.
The categorical exemption is effective 30 days after the action.
Until September 30, 2025, all project actions that propose to develop one or more "residential housing or middle housing units" within a city west of the crest of the Cascade Mountains with a population of 700,000 or more (i.e., Seattle) are categorically exempt from SEPA. After this date, these project actions may use the exemption process.

Adoption of County Critical Area Ordinances by Cities
Under the changes outlined in SB 5374, a city with a population fewer than 25,000 may adopt the county's critical areas regulations by reference to satisfy the GMA's critical areas requirements, provided the county's critical areas regulations are not subject to administrative or judicial appeals at the time of a city's adoption.

If a city chooses to adopt the county regulations by reference, it must incorporate future amendments to critical areas policies and development regulations of the county. A city that adopts the county's critical areas regulations by reference is not required to take legislative action to review and update development regulations protecting critical areas under RCW 36.70A.130.

HB 1293: Streamlining development regulations.
requires local design review of homebuilding projects to use standards that are "clear and objective" and don't reduce development capacity. In addition, the review process cannot require more than one public meeting. Capricious design review requirements can drive up the cost of homebuilding by adding delay and uncertainty.

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

- Prohibits owner occupancy requirements (also known as "renter bans");
- Legalizes two ADUs per lot in any configuration of attached and detached options;
- Caps impact fees at 50 percent of those charged on single-detached houses;
- Lifts parking mandates on ADUs within a half-mile of a transit stop with 15-minute service; otherwise caps mandates at one space per ADU on lots under 6,000 square feet;
- Legalizes an ADU on any lot size that's legal for a single-detached house;
- Establishes that cities allow a minimum size of at least 1,000 square feet; and
- Loosens several other restrictions
- Though it morphed along the way, HB 1337 as passed was overall about as strong as it was when introduced. The original version gave cities flexibility to choose three out of the first four actions in the list above, except that the parking provision completely lifted mandates. The Senate Local Government Committee removed the parking provision but mandated the remaining three actions. Then on the floor, the Senate amended in the parking reductions noted above.

The House pushed out the compliance date from July 2024 to six months after the jurisdiction's next Comprehensive Plan update. Unfortunately, that's an added delay of about a year for most of the Puget Sound region and several years of delay in other parts of the state.
The best we can do for a production estimate is a back-of-the-envelope figure based on data from other places that have already adopted similar ADU rules. ADU completions

in California increased by about 10,000 per year after all its reforms were adopted. Scaling by relative population, we could expect an average boost of about 2,000 ADUs per year in Washington. As an upper bound, if all of Washington's urban growth areas saw a per capita increase in ADU production similar to Seattle's post-ADU-reform boost, that would be about 5,000 ADUs per year.

2SHB 1009: Military Spouse employment
Establishes requirements for certain state agencies and licensing authorities related to the professional licensing and employment of military spouses. • Allows a military spouse to terminate an employment contract without penalty after his or her service member spouse receives orders for a permanent change of station

SB 5045: Incentivizing rental of accessory dwelling units to low-income households.
Washington State Legislature. Incentivizing rental of accessory dwelling units to low-income households.

SB 5058: Exempting buildings with 12 or fewer units that are no more than two stores from the definition of multi-unit residential building.
Exempting buildings with 12 or fewer units that are no more than two stories from the definition of multiunit residential building
exempts projects of two stories, with up to 12 units, from building enclosure design and enclosure inspection requirements, both of which add excessive costs to small-scale condo developments.

SB 5258: Increasing the supply and affordability of condominium units and townhouses as an option for homeownership.
modifies condo laws on construction defect actions and warranties, deposit requirements, and local government planning, and would exempt condo sales to first-time homebuyers from the real estate excise tax. For years, Washington has suffered from a dearth of condo construction, which has worsened the state's shortage of lower-cost homeownership options.

SB 5290: Concerning consolidating local permit review processes.
establishes grant programs for local governments to reduce permit review timelines and supports their transition from paper-based to software/web-based systems. Sightline analysis showed that for a typical six-story apartment building, every two months of delay adds development expense roughly equal to the cost of constructing one apartment.

SB 5399: Future Listing Contracts
Limits the duration of future listing right purchase contracts to a term no longer than five years. • Allows future listing right purchase contracts to act as liens that are subordinate to home financing, refinancing, or home equity line of credit.

SB 5412: Reducing local government's land use permitting workloads
exempts from State Environmental Policy Act (SEPA) review proposed housing developments within urban growth areas that comply with local Comprehensive Plans. SEPA review has become largely redundant with local regulations and adds cost and delay to homebuilding. Worse, it makes it easy for activists to abuse SEPA to block housing through legal appeals.

Educational Objective 1: Common Concepts

Identify and describe Identify and describe common concepts relating to Washington State residential real estate legislative issues.

Specifically, the learner will know and be able to identify and describe:

a. Clarification on Protected Classes (10 Min)

- Review the Federal Protected Classes (https://www.eeoc.gov/)
- Review the additional Washington State Protected Classes (https://www.hum.wa.gov/fairhousing)

Discrimination in the employment context: Which groups get federal protection?
There are protection extended by Congress for specific groups that have faced hardships historically when it comes to obtaining employment, housing, and other public accommodations.
Unfair treatment does not always constitute a violation of the law. In the context of employment, courts are not considered "super-personnel" departments that second guess all employment decisions (see, e.g., Johnson v. Weld County (10th Cir. 2010); Chapman v. AI Transp. (11th Cir. 2000). According to civil right statues, only actions that are based on someone's membership in a protected class are prohibited.
What are the protected classes?
There are several protected classes under federal law. Employers cannot discriminate based on: Race, Color, National origin, Religion, Sex, Age and Disability
The law does not require employers to take a person's membership in one of the groups listed above into account in every situation.
An employer could, for example, make an employment decision and consider membership in a protected class if there is a business necessity for doing so. Also, membership in a protected class can be a bona fide occupational qualification.
There may be criteria involved for someone to be considered a member of a protected class. For example, it may be necessary to meet criteria to be considered a qualified individual with a disability in order to receive reasonable accommodations in the workplace.
History of the Protected Classes
The earliest protected classes were race and color. In 1866, the Civil Rights Act prohibits discrimination in civil rights or immunities that are based on race or color. It also barred discrimination in making contracts based on race and color, which includes employment contracts.

In the 20th century, protected classes grew. The Civil Rights Act of 1964 prohibited discrimination in employment based on race, color, national origin, sex, and religion. The Equal Employment Opportunity Commission (EEOC), which is a federal agency that enforces Title VII and civil rights acts that apply to employment.

In 1967, the Age Discrimination in Employment Act (ADEA) added to the list of protected classes. This act applies to those age 40 and older. It has typically been interpreted narrowly by the federal courts and requires more than a year or two In age difference between employees in order to be supported as age discrimination.

In 1973, disability was added to the list of protected classes by the Rehabilitation Act. The act prohibits discrimination based on disability in federal employment. In 1990, the Americans with Disabilities Act (ADA) provided similar protections to employees in the private sector. In 2008, the definition of those covered by ADA was expanded further by the Americans with Disabilities Amendments Act.

Protections Against Harassment

Title VII does not specifically reference harassment or a hostile work environment. It prohibits employers from discriminating against employees or applicants based on their race, color, national origin, sex, or religion. In Meritor Savings Bank (1986), the Supreme Court decided that harassment and a hostile work environment may include non-economic harms, including name calling or inappropriate touching.

Even if harassment does not meet the level of economic harm like a demotion or firing, it is still covered under Title VII.

In Meritor Savings Bank, the Supreme Court extended the reach of the harassment protections under Title VII to include only instances where harassment is so severe that it alters the terms and conditions of employment.

Harassment decisions are decided by courts on a case-by-case basis to determine whether the harassment was severe or pervasive enough to meet the standard. T typically, multiple incidents of harassment are necessary to meet the standard. The instances are very limited when specific racial slurs or a hanging noose were considered sufficiently severe.

Ongoing evolution of Sex as Protected Class

In 1989, the Supreme Court recognized sex stereotyping as a form of prohibited sex discrimination in Price Waterhouse v. Hopkins. Ms. Hopkins was denied a position as a partner by Price Waterhouse based on a decision by the partnership committee that said Ms. Hopkins did not behave how they expected a woman to in the workplace. Ms. Hopkins received feedback that she should behave more femininely, including how she walked, talked, and dressed. This discrimination was found to undermine the purpose of Title VII by the Supreme Court.

Sex stereotyping is a critical part of the recent developments when it comes to protected classes. The EEOC and two federal courts concluded that Title VII prohibits discrimination that is based on sexual orientation, classifying it as a form of sex discrimination.

Sexual orientation discrimination has been concluded to be based on stereotypes regarding who an individual should be attracted to on the basis of their sex. In Baldwin v. Department of Transportation (2015), the EEOC noted that "'sexual orientation' as a concept cannot be defined or understood without reference to sex."

All federal courts do not agree with this interpretation, however. So the issue is largely unresolved on a national level when it comes to the private sector. The EEOC's 2015 decision is applicable to federal government employees.
In 2017, the Department of Justice released a brief in Zarda v. Altitude Express, Inc., (883 F.3d 100 (2d Cir. 2018)) that disagrees with the EEOC and argues that sex does not include sexual orientation. However, the DOJ's position was rejected by the Second Circuit in 2018. The Second Circuit concluded that Title VII bars sex discrimination that includes discrimination based on sexual orientation.
Conclusion
Federal law provides certain protections against discrimination for protected classes. The understanding of protected classes has evolved greatly over the last century and may continue evolving through courts and federal legislation. Typically, the process is started by societal responses to new issues involving discrimination.

Additional Washington State Protected Classes In Washington, discrimination based on these protected classes is prohibited.
• Sex. • Race and color. • Religion and creed. • National origin. • Sexual orientation. • Gender identity and gender expression. • Disability and the use of a trained dog guide or service animal. • Honorably discharged veteran or military status.

Landlord Tenant Law Update (2024-25 Legislative Session) (10 Min)

- Update on HB 1138, armed forces exceptions for giving notice of termination of tenancy.
- Update on HB 1694 must allow installment payments on deposit and other move-in costs.
- Update on HB 2535, grace period before late fees may be imposed for past due rent.
- Update on SB 5600, timely notice for economic evictions. Rent payment policy requirements and eviction process reform.

2019 Washington State updates to the Landlord Tenant Act June 14, 2019

The legislature passed SB 5600, HB 1440, HB 1138, and HB1462 at the end of the Washington Legislative session, and the governor signed the legislature into law. The legislation involves rewrites of the current Landlord Tenant laws, and the new laws are effective as of July 28, 2019. These laws are greatly in favor of tenants.

The Rental Housing Association of Washington provided an online summary of the changes, which are extensive.

The Washington Landlord Tenant Act amended SB 5600 in the following ways:

- The eviction process has been amended to create a fund to pay monetary judgements for tenants that are reinstated

- The notice period for a pay or vacate notice has been extended from three to 14 days before landlords can file summons and complaint for an unlawful detainer. The bill's

language does not mandate a grace period before a landlord can issue a pay or vacate notice for nonpayment of rent in a particular month.

- The definition of rent includes recurring charges in the rental agreement and utilizes. Non-recurring charges, such as deposits, damage fees, late fees, and attorneys' fees, are excluded from this definition. However, payment plans for security deposits are allowed under the definition of rent.

- If a tenant defaults, the landlord can treat the default as rent owing if an installment payment plan for nonrefundable fees or security deposits are established at the beginning of tenancy.

- Landlords are prevented from obtaining a writ of restitution to remove tenants from a unit for charges that are not contained in the new definition of rent. This applies even if the charges are still owed, but they may be pursued through other civil actions, like small claims court.

- A new easy to read pay or vacate notice in statue was created to modernize the language of the standard form Summons and Complaint. This requires the Attorney General's office to maintain a website that provides common notices in

the 10 most common languages in Washington. The site must also provide references for legal services for tenants.

- The requirement for a court order to serve an unlawful detainer summons and complaint by posting was removed. Landlords can post the summons and complaint after three attempts at personal service. A judge will address issues of appropriate service before making a judgment. Service by posting only allows for a writ of restitution still. It does not create jurisdiction for monetary judgements.

- Language that requires a tenant to place the amount of a monetary judgement into the court registry to stop execution of a writ of restitution was removed.

- The amount that can be awarded in a monetary judgment for an unlawful detainer is capped at $75. Late fees owed may be pursued through other civil actions.

- The standards a judge can use to award reasonable attorneys' fees were created. The judgement must be for more than the amount of two month's rent or $1,200, whichever is greater, if parties appear for a show cause hearing. Attorneys' fees may be awarded if a tenant is reinstated. If the tenant files a motion for reinstatement but is not reinstated by the court, they may not be awarded attorneys' fees.

-Tenants with a judgement that finds them guilty of unlawful detainer may request reinstatement of tenancy from the court. They can set up a payment plan to pay off any monetary judgement. Reinstatement of tenancy is allowed if the tenant is on a rental agreement and pays the full monetary judgement within five days.

- There are seven factors that a judge must apply to determine reinstatement and terms of a payment plan.

- The tenant's willful or intentional failure to pay rent ▪ Whether the nonpayment was caused by exigent circumstances that are not likely to recur ▪ The ability of the tenant to

pay rent ▪ Payment history of the tenant ▪ Whether the tenant is otherwise in substantial compliance with the

rental agreement ▪ Hardship of the tenant if evicted ▪ Conduct related to other notices in the past six months

- Judicial discretion can be used for reinstatement only for nonpayment of rent instead of violations of the lease agreement. Tenants cannot be award reinstatement if they have received three pay-or-vacate notices in the past year.

- Payment plans for monetary judgement between landlords and tenants have to be paid in full within 90 days. A $50 penalty was created and applies to the tenant for subsequent unlawful detainers after reinstatement is awarded.

- Tenants must pay off a month's rent in the monetary judgment within five days to remain eligible for the payment plan. Tenants must pay the cumulative amount of a month's rent within 30 days of reinstatement. Then, they must pay the cumulative amount of at least one month's rent within 60 days of reinstatement. Finally, the balance must be paid within 90 days. If a tenant defaults on any benchmark for the payment plan, the landlord can execute the writ of restitution from the original unlawful detainer with three days' notice to the tenant.

- A tenant must be current on new rent owed during their payment plan period or the landlord can execute the writ from the unlawful detainer. When a judgement is ordered after the 15th of the month, the tenant may prorate the first month's new rent into their payment plan, using the existing benchmarks for timely payments.

- Landlords can submit a request to have the entire monetary judgement paid by the Department of Commerce Landlord Mitigation Program. The Department of Commerce has 30 days to approve the claim and an additional 15 days to pay the landlord. Tenants are responsible for paying the state, which is outside of the landlord-tenant relationship.

- If the Landlord Mitigation Program has insufficient funds, the landlord can execute the writ to remove the tenant. They can hold the request for payment to be made by the state on a first come, first served basis when funds are replenished.

- $1 million has been appropriated by the 2019 State Legislature for the capital budget for the Landlord Mitigation Program. Further budgetary funds will need to be appropriated by future legislatures in the supplemental budget process and in future budget cycles.

Additional changes to the Washington Landlord Tenant Laws were made with the approval of HB 1440, HB1138 and HB1462.

HB 1440 increases the rent notices form from 30 to 60 days for any amount of rent. The law is statewide and prohibits the increase from taking effect before the term of the rental agreement is complete.

HB 1138, or the Residential Landlord Tenant Act (RLTA), includes language that updates the regulatory framework for the legal termination of a lease agreement by a

member of the Armed Services, their spouse, or dependent. A member of the Armed Service and their spouse or dependent can give a 20-day notice if they have to break their lease obligation due to specific circumstances. These circumstances may include being released from active duty, assigned to a new permanent change of station more than 35 miles from their current location, or receiving deployment orders.

HB 1462 requires 120-days' notice from a landlord to terminate month-to-month tenancies if the termination is for substantial rehabilitation for the property, a change of use, or demolition. Substantial rehabilitation is defined as, "extensive structural repair or extensive remodeling of premises that requires a permit such as a building, electrical, plumbing, or mechanical permit, and that results in the displacement of an existing tenant". Change of use is defined as conversion from residential to nonresidential, or to another form of residential use.

Change of use does not include displacing a tenant so that an owner or their immediate family can occupy a unit. If a property owner is in violation of this policy, they may be liable in a civil action for up to three times the monthly rent.

SB 5600, HB 1440, HB 1138, and HB1462 all provide significant changes to the Washington State laws.

Reading these bills and taking an updated class from the Rental Housing Association of Washington (RHAWA) or the Washington Multifamily Housing Association (WMFHA) can help you stay up to date on this information and all forms being used.

Tenants have obtained more rights under these bills, and it is important to understand them in order to protect yourself and tenants.

c. Landlord Tenant Law Update (2021 legislative Session)

- **Update on HB 1236, limiting the reasons for eviction, refusal to continue, and termination**.

- Cause Required for Eviction, Refusal to Renew, and Ending a Tenancy. If a rental agreement provides for the tenancy to continue for an indefinite period after the agreement expires, a landlord may end the tenancy at the end of the initial period without cause if the initial rental term is between six months and one year and the landlord provides the tenant with at least 60 days' written notice. When a rental agreement is for a specified period and does not continue for an indefinite period or on a month-to-month basis after the specified period expires, the landlord may end the tenancy without cause only if: the initial agreement is for one year or more, or the landlord and tenant have continuously entered into successive rental agreements of six months or more since the inception of the tenancy; • the landlord provides at least 60 days' written notice to the tenant before the end of the specified period; and • the tenancy has not been for an indefinite period on a month-to-month or periodic basis at any point, unless a rental agreement was entered into for a monthly or periodic tenancy between the effective date of this act and three months following the expiration of the Governor's eviction moratorium. • For all other tenancies of a

specified period, and for tenancies on a monthly or periodic basis, a landlord may not end the tenancy except for one of the enumerated causes. A tenant may end a tenancy for a specified time by providing written notice 20 days' prior to the end date of the specified period. The following reasons constitute cause for a landlord to evict, refuse to continue a tenancy, or end a periodic tenancy: 1. failure to pay rent (14-day notice); substantial breach of a material program requirement of subsidized housing, material term of rental agreement, or tenant obligation imposed by law that has not been remedied (10-day notice); 2. 3. committing or permitting waste or nuisance, unlawful activity that affects the use and enjoyment of the premises, or other substantial or repeated interference with the use and enjoyment of the premises (3-day notice); landlord, in good faith, seeks possession so that the owner or his or her immediate family may occupy the unit as the principal residence and no substantially equivalent unit is vacant and available (90-day notice); 4. 5. owner elects to sell the premises, a single-family residence (90-day notice); premises to be demolished, substantially rehabilitated, or change of use (120-day notice); 6. owner elects to withdraw the premises from the rental market to pursue a conversion (120-day notice); 7. premises are condemned by a local agency (30-day notice, or less if continued habitation would subject the landlord to criminal or civil penalties); 8. service of notice to quit or vacate by the owner or lessor with whom the tenant shares the dwelling unit or access to a common kitchen or bathroom area (20-day notice); 9. transitional housing program expires, the tenant ages out of a program, or the tenant has completed a program and is no longer eligible (30-day notice); 10. rental agreement has expired, the landlord proffers a new rental agreement at least 30 days prior to the expiration, and the tenant does not sign; 11. intentional and knowing misrepresentation or omission of material information on the tenant's application that, had the misrepresentations or omissions not been made, would have caused the landlord to request additional information or take adverse action (30-day notice); 12. other good cause which constitutes a legitimate economic or business reason (60-day notice); 13. four or more violations of a substantial breach of a subsidized housing requirement, material term of the lease, or tenant obligation under law that were cured by the tenant within the previous 12-month period and the landlord provided a written notice for each violation (60-day notice); 14. required to register as a sex offender during the tenancy, or failed to disclose a requirement to register as a sex offender when required in the rental application or otherwise known to the property owner at the beginning of the tenancy (60-day notice); and 15. makes unwanted sexual advances or commits other acts of sexual harassment directed at the property owner, manager, employee, or another tenant based on race, gender, or protected status in violation of a lease term or covenant (20-day notice). 16. Notices must identify the facts and circumstances known and available to the landlord at the time the notice is issued that support the cause or causes with enough specificity so as to enable the tenant to respond. The landlord may present other evidence regarding the allegations within the notice where the evidence was unknown or unavailable at the time the notice was issued. Remaining Occupants. Where a tenant permanently vacates for reasons other than the ending of the tenancy by the landlord, and occupants co-resided with the tenant prior to and up to the tenant's vacation with the landlord's approval, the landlord must serve a notice to

the remaining occupants at least six months before the tenant vacates, requiring the remaining occupants to either apply to become a party to the rental agreement or vacate within 30 days. If the occupant fails to apply within 30 days or the application is denied, the landlord may commence an unlawful detainer action. These new provisions regarding occupants are not applicable to subsidized housing tenancies.

- **Update on SB 5160, tenant protections during and after public health emergencies, providing for legal representation in eviction cases, establishing an eviction resolution pilot program for nonpayment of rent cases, and authorizing landlord access to state rental assistance programs.**

Washington State is making several changes to the law as a result of the passing of Senate Bill 5160 ("SB 5160"). These changes went into effect upon its passing on April 22, 2021. Many of the changes, however, do not affect operations until Governor Inslee's moratorium expires on June 30, 2021. SB 5160 is designed as an off-ramp for the moratoria, creating transitional rules that ease the limitations on landlord rights but also creating new restrictions. The bill creates new tenant protections, provides legal representation for indigent tenants in eviction cases, establishes an eviction resolution pilot program for nonpayment of rent cases statewide, and creates rental assistance programs.

This legislative update below highlights the major changes to landlord-tenant law in SB 5160 but is not a substitute for a full review of the bill.

1. Tenant Protections

For any rent, fees, or other charges assessed to a tenant that became due between March 1, 2020, and December 31, 2021, the following rules apply:

- A landlord is prohibited from:
  - imposing late fees on the debt;
  - reporting the delinquency or an unlawful detainer based upon the debt to a prospective landlord; and
  - inquiring about, considering, or requiring disclosure of a tenant's or prospective tenant's medical records or history, unless it is necessary to evaluate a reasonable accommodation or modification request.
- A prospective landlord is prohibited from:
  - taking adverse action based on a prospective tenant's nonpayment;
  - denying, discouraging application for, or otherwise making unavailable a rental based on a tenant's or prospective tenant's medical history, including their prior or current exposure or infection to the COVID-19 virus;
  - inquiring about, considering, or requiring disclosure of a tenant's or prospective tenant's medical records or history, unless it is necessary to evaluate a reasonable accommodation or modification request;

Violations of these rules expose landlords to civil liability of up to two and one-half times the monthly rent, court costs, and reasonable attorneys' fees.

2. Repayment Plans

For any unpaid rent accrued between March 1, 2020, and the later of December 31, 2021 or the end of the public health emergency, landlords are required to offer repayment plans as follows:

- A landlord must offer the tenant a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payment equal to one-third of the monthly rental charges during the period of accrued debt (1/3 of the monthly rental charges is the maximum but the plan must still be "reasonable" (which is not defined)).
- If a tenant fails to accept the offer of the reasonable repayment plan within 14 days of the offer, landlord may proceed with an unlawful detainer action, subject to requirements of the new Eviction Resolution Pilot Program (addressed below).
- If the tenant defaults on any rent owed under a repayment plan, the landlord may apply for reimbursement from the landlord mitigation program or proceed with an unlawful detainer action, subject to requirements of the Eviction Resolution Pilot Program.
- The court must consider the tenant's circumstances, including decreased income or increased expenses due to COVID-19, and the repayment plan terms offered during any unlawful detainer proceeding.
- Repayment plans:
    - must commence no less than 30 days after the repayment plan is offered;
    - cover rent only; they may not include late fees, attorneys' fees, or any other fees and charges;
    - shall allow for payments from any source of income or from pledges by nonprofit organizations, churches, religious institutions, or governmental entities; and
    - May only address repayment of rent; they may not include other provisions or conditions or waivers.
    - It is a defense to an eviction that the landlord did not offer a repayment plan as described above.

It is noteworthy that the protected period of debt is tied to the later of the eviction moratorium or the public health emergency. Consequently, if either are extended beyond June 30, 2021, then the protected period of debt will also be extended.

3. Eviction Resolution Program

The Eviction Resolution Pilot Program (ERP) was mandated and now applies to all counties in the state of Washington. In accordance with the program, new notices must be sent before filing an unlawful detainer action and mediation may be required.

Prior to filing an unlawful detainer action for nonpayment of rent, landlord must provide notice to the tenant informing them of the ERP along with a 14-day termination notice

for nonpayment. The landlord must retain proof of service or mailing of the additional notice.

The ERP notice must include the following information:

- Contact information for the local dispute resolution center;
- Contact information for the county's housing justice project or, if none, a statewide organization providing housing advocacy services for low-income residents;
- The following statement: "The Washington state office of the attorney general has this notice in multiple languages on its website. You will also find information there on how to find a lawyer or advocate at low or no cost and any available resources to help you pay your rent. Alternatively, you may find additional information to help you at http://www.washingtonlawhelp.org";
- The name and contact information of the landlord, the landlord's attorney, if any, and the tenant; and
- The following statement: "Failure to respond to this notice within 14 days may result in the filing of a summons and complaint for an unlawful detainer action with the court."

At the time of service or mailing of the pay or vacate notice and ERP notice, a landlord must also send copies of these notices to the local dispute resolution center serving the area where the property is located.

Before an unlawful detainer action for nonpayment of rent may be heard by the court, a landlord must secure a certification of participation with the ERP program by the dispute resolution center.

The ERP requirements will expire on July 1, 2023 unless renewed.

4. Landlord Mitigation Fund

The Landlord Mitigation Fund was re-enacted and amended to address the debt incurred during the eviction moratoria. Subject to availability, the fund is set up to reimburse landlords for certain improvements, damages, unpaid rent and unpaid utilities. A new provision allows for claims related to unpaid rent accrued from March 1, 2020 through December 31, 2021 in the amount of:

- Up to $15,000 for tenants who are low-income, limited resourced, or experiencing hardship, voluntarily vacated, or abandoned the tenancy.
- Up to $15,000 in remaining unpaid rent if tenant defaults on a repayment plan (discussed above), provided the tenancy has not been terminated at the time of reimbursement.

Landlords are ineligible for reimbursement through the Fund if the tenant vacated the tenancy because of an unlawful detainer action for nonpayment. Further, a landlord in receipt of reimbursement is prohibited from taking legal action against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy; or

pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy.

5. Right to Counsel

Subject to availability, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding. Notice of the right to counsel and contact information must be provided to the tenant on the eviction summons.

6. 14- Day Notice to Pay or Vacate

The 14-day Notice to Pay or Vacate has been updated. Once issuing this type of notice is allowed, and prior to the issuing of the notice, landlords should be sure that their forms have been updated to comply with the requirements of SB 5160.

Until the ERP Program expires (July 1, 2023), landlords will be required to begin sending a copy of any 14-day notice to the dispute resolution center located within or serving the county in which the dwelling unit is located. Failure to send a copy of the 14-day notice will be a defense to an eviction.

7. Summons for Unlawful Detainer

The unlawful detainer mandatory summons format has been updated. The old version should no longer be used. As previously mentioned, the updated summons includes information on the right to counsel and additional resources for tenants.

8. Other Tenant Protections in Unlawful Detainer Actions

SB 5160 also places limits on certain agreements between landlords and tenants. In an unlawful detainer case, there can be no agreement waiving the tenant's rights to apply payments in the lawful order or to condition occupancy on a payment of items other than rent or other statutory judgment limits. It also prohibits the waiver of rights guaranteed to tenants under the Landlord-Tenant Act.

This article is not intended as legal advice. Please obtain advice of an attorney for any policy change or decisions regarding residential and commercial Landlord-Tenant matters.

TOPIC AREA III: BUSINESS PRACTICES UPDATE AND PROFESSIONAL STANDARDS 1 hour and 30 minutes

Educational Objective 1: **Understanding the basics of best business practices and professional standards.**

Specifically, the learner will know and be able to identify and describe:

a. **Raising the bar of professionalism in interactions**.

It is in the best interest of broker and licensees to have professional cooperation. It will not only help in building larger customer base but also to build and retain a good name in real estate market.
Getting involved in malicious or selfish acts that are considered as unethical are highly prohibited and disciplinary action can also be taken against such brokers.

For a successful and long term business, brokers and licensees need to work well with other brokers and licensees.

A successful real estate agency has and maintains good connections and references. When other real estate agencies have trust in your sincerity and good will, your reputation among clients will automatically increase.

b. **Managing Broker responsibilities regarding managing a firm or branch office or as a team leader.**

Duties of Managing Broker
The broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may not be waived:
• To exercise reasonable skill and care;
• To deal honestly and in good faith;
• 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;
• 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;
• To account in a timely manner for all money and property received from or on behalf of either party;
• 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

• 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."

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.

Timely presentation of all written offers (RCW 18.86.030(1)© (source wa realtor.org)

All offers must be presented timely. What “timely” means depends upon the circumstances at issue. Certainly, “timely” requires presentation before the offer expires, unless it is impossible to present the offer prior to expiration. If seller is unavailable or refuses to review an offer prior to expiration, then listing broker’s file should reflect those circumstances.

Even if seller set an offer review date in the future, broker must notify seller if an offer comes in from a buyer with an expiration date prior to seller’s established review date. Seller must be informed that an offer will expire, and thus be void, before the pre-determined offer review date. It is always up to seller whether seller will review an offer earlier than previously identified as the review date.

Similarly, absent a seller’s instruction, it is not appropriate to delay presentation of an offer while listing broker hopes for additional offers to be presented, including offers from listing broker’s buyer. If listing broker believes that delayed presentation of an offer is beneficial to seller, listing broker must advise seller of the circumstances and adhere to seller’s subsequent instruction. If seller instructs delay, broker should document that instruction, in writing, in broker’s transaction file.

The duty to timely present all written offers persists even after mutual acceptance. If buyer or seller makes an offer to the other, after mutual acceptance, typically an offer to modify the contract, that offer must be presented timely. If a different buyer makes an offer to seller after seller is already in a binding agreement with a buyer, that new offer must also be presented timely to seller.

It is important to note that this “failure to present offers” has become a significant discipline issue for DOL. It is unlikely that listing brokers are actually failing to present all offers timely. It is far more likely that listing brokers are failing to give unsuccessful buyer brokers proof that seller actually reviewed and rejected buyer’s offer, leaving buyer and buyer’s broker to wonder whether seller saw buyer’s offer at all.

Buyers and buyer brokers, frustrated by not getting the property and uncertain as to whether buyer’s offer was seen, are more likely to file a complaint with DOL, claiming

listing broker failed to present the offer. When DOL investigates, listing broker will have to prove that listing broker timely presented all written offers. Unfortunately, a typical listing file contains no proof of timely presentation.
Listing brokers can avoid this DOL investigation and discipline altogether by giving buyer brokers the courtesy of notification that seller rejected buyer's offer. Returning the offer with the word "rejected" written across the face of the offer, signed and dated by seller, provides proof of seller's timely review and rejection of the offer.

d. Multiple Offer Scenarios

i. How to evaluate offers based on a buyer's ability to close on terms acceptable to seller.
ii. How to avoid evaluating offers based on discriminatory information or protected classes.
iii. Seller and Buyer options when facing multiple offer situations.
iv. Time is of the essence when presenting offers.
v. Best practices in multiple offer situations.

It is often that multiple offers are presented or anticipated on a single property. When dealing with multiple offers, sellers and buyers should prepare and evaluate offers based on a buyer's ability to close on terms acceptable to seller.
It is part of broker's duty to inform the buyer as to the multiple offers status of property and discuss how to improve chances of getting the offer approved. Buyers should make their offers competitive, not just a random offer.

To show seller that the particular buyer is seriously interested in closing, the buyer may deposit large amount of earnest money as part of down payment. Buyers may also make their offer stronger by attaching lender's loan pre-approval letter. Preapproval is different from pre-qualification, in pre-approval, the lender approves the loan for buyer. This enhances the offer's chance to be accepted.
It is the duty of broker to advise sellers how to deal with multiple offers on a particular property. Broker should guide seller to evaluate offers on the terms of buyer's ability to accept the terms of seller.

However, buyers or sellers should never prepare or evaluate offers based on discriminations or protected classes.

Doing so will result in violation of fair housing law. Brokers should always stay vigilant in dealings and should
never allow or become part of any discriminatory decision.
When the buyer is told by the broker that the property is getting multiple offers, the buyer may wish to make a stronger offer by using different tactics:
1. Make offer highly competitive. The buyer should know his or her maximum budget limit and give his or her best offer.

2. Make more than usual earnest money deposit to assure the seller that buyer will not back off.
3. Provide evidence of funds, such as a pre-approval loan letter from his or her lender. Pre-approval letter shows that credit for buyer is already approved.
4. If the buyer is willing to pay cash, he or she should attach documents that prove that the buyer can instantly pay due to good bank balance.
5. If the buyer can use Escalation clauses or Addendums. It is the duty of the licensee to fully explain what an Escalation clause is and how it works. Simply it means that the buyer agrees to pay a set amount more than his or her original offer IF a higher offer is placed by another buyer.
For instance, Buyer Mr. X offers $200,000 for a property and with help of broker adds an escalation clause that in the case of a higher competing offer the buyer will increase his offer in increments of $5,000 above the competing offer. His escalation clause goes up to a maximum of $230,000. If no other offers are submitted, Mr. X's offer remains at $200,000.
If a buyer Mr. Y offers the seller $210,000, then Mr. X's offer would automatically escalate to $5,000 above that, bringing Mr. X's offer to $215,000. If a buyer Mr. Z offers $233,000 for the property, then Mr. X's maximum of $230,000 will be eclipsed, and Mr. Z will have the top offer.
Apart from clauses, buyers can also use any document or form that will make their offer more attractive.
In sellers' market, when multiple offers are generated on a particular property, counteroffers are the often result.

The broker should guide the seller as to the best procedure when multiple offers are made. The seller can opt back and forth or allow more time to get offers from additional buyers, and then analyze all of the offers. All offers may have different particulars and need to be evaluated properly. If the seller does not like any of the offers, the seller can make a counter-offer to any buyer.

Counter-offer may include:

1. Total consideration (generally a higher price)
2. Increasing the size of the earnest money deposit
3. Refusals to pay for certain reports or fees
4. Changing service providers
5. Altering closing or possession date
6. Excluding personal property from the contract
7. Modifying contingency time frames

Sellers can make more than one counter-offer, discussing on the points discussed above. In all of these activities, broker can help the seller determine which may be in his or her best interest. However, care must be taken that sellers do not accept multiple offers. Keep record of all counter offers and evaluate on the basis of buyer getting on seller's terms.

Risky practices in an abundant market
From Listing Brokers:

Falsifying information about competing offers is a violation of Uniform Regulation of Business and Professions Act RCW 18.235.130 and the duty to deal honestly and in good faith.
When giving offer instructions, care must be taken by the broker to the seller. For example, the broker cannot use these instructions as a tool to filter buyers offers to the seller. The broker must present all offers to the seller in accordance to Agency Law duty to timely present all written offers to your client.
If using, should be signed by sellers.

Listing brokers should present offers to the seller immediately upon receipt ("timely" presentation is likely getting the offer to the seller the day it is received by the listing broker).

If the listing broker is holding for offers for the seller to review on for a future date, this should be the seller's idea, or the seller should agree by signing off the MLS data sheet where this is stated.

If the seller wants to accept an offer early, what advice do you provide the seller, he or she may do so but with the knowledge that more offers may be coming.

Bright Line Rules:

- Present all offers received to the seller.
- Present all offers timely (the day the offer is received).
- Every action taken is the seller's choice.

From Buyer Brokers:

Dangerous inspection scenarios:

- Waiving all inspections
- Inspection "for information only"
- Seller Pre-Inspection
- Buyer Pre-Inspections

- Striking the "Information Verification" paragraph from the PSA

- Earnest money to be released to the seller upon mutual acceptance.

- Post-Closing possession by seller

- Buyer waiving the right to receive "Seller Disclosure Statement" form (Form 17).

Misleading Photos In Listings (source: boxbrownie.com)

Real estate photo editing is not a new thing and is a regular practice in property marketing, but there is a fine line between what is right and wrong when editing photos for advertising.

If considering photo editing or retouching, it is up to the broker to ensure the property images are not misleading to avoid penalties and fines. All Realtors want great photos, but there are some things you just should not do.

Photographic Representation
Do not use photographs that give the wrong impression of a property. These include photographs that are:

Accompanied by comments or other photographs that suggest a property has views or is close to amenities such as parks, beaches, schools or transport when in reality it isn't.
Digitally enhanced to hide undesirable features or promote other features.

Brokers must ensure that any claims made about property or land characteristics in any photographic representations and advertising are accurate and do not give prospective buyers the wrong impression.

If there is room for doubt that images may be considered misleading, labeling can be used to accurately portray what is in the photograph.

Do Not Edit From Photos
It is best to err on the side of caution when choosing what to edit in photos. If it is considered misleading to the buyers, then it shouldn't be removed, it is the responsibility of the broker to correctly display all features of the property. It is well known that great property images are essential to effective real estate marketing, but you do not want to go so far as to make them deceiving.

Not Recommended:

Removing permanent fixtures- These include; power-lines, neighboring buildings, air conditioning units etc.
Changing the color- If the front of the house is not going to be white when sold, do not edit it to be white. The way you present the house in advertising needs to be the same as when the buyer views it in person.
Trick angles - Taking photos of the property at angles that hide unappealing features is a big no-no, just check out this article! It is important that any photos represent the property accurately.
Location shots - If photos taken from the surrounding area (eg, beach views, pretty park), it needs to be clearly tagged as a 'location shot', so that buyers are not misled into thinking it was taken at the property.

Reasons for Using Image Editing for Real Estate

Image editing is essential for effective real estate marketing and is used by everyone. It is important though to not take the editing too far, enhancing images is fine but removing important details can be considered misleading.

Changing The Sky

Sometimes the weather is not great, or the only time professional photos can be scheduled is when it is overcast and cloudy. It is also common knowledge in real estate the dusk shots and sunny days present the best in advertisements.

It is perfectly fine to use image enhancement to replace sky backgrounds whenever the weather is not ideal.

Creating Unobstructed Views

It is not always possible to get a photo of the front of a house without cars, bins, broker's signboard in the way. These are items that can be removed from property photos with image editing to reduce clutter and unwanted items blocking the ability to display the properties features.

The same editing can be done for inside the house. Removing occupant clutter, but leaving fittings and fixtures (lights, blinds etc) with image editing is completely fine. You are selling the house not the current owner's furniture inside!

Updating Furniture

Spaces that are empty or have unappealing furniture, can be replaced to make the listing more appealing. Remember it is ok to replace furniture, even virtually, as it is not something being sold with the property.

Virtual renovations are particularly important with commercial spaces, as buyers are generally looking at the potential of the space. Commercial spaces are generally sold completely empty, with key feature like power points, light fittings etc completely hidden. Editing photos, or Virtually Renovating, them is a common practice of highlighting the features of the space. It is always important to include a disclaimer or an image showing what the space currently looks like.

The main thing to remember when virtually renovating or staging a property is to include a disclaimer and/or the 'before' photos. Full disclosure is the best thing to do it you're ever unsure if an image can be considered deceiving.

Renovations Taking Place After Photography

There are times when professional photos cannot be taken after planned renovations and landscaping has taken place. In instances like this, it is ok to use image enhancement and editing to show what the finished home or garden will look like. We recommend that any brokers doing this include a disclaimer that some of the features are digitally included to represent the final outcome.

Unkempt Listings

It is particularly common for rental properties to be neglected, with dirty pools, un-mowed lawns and paint missing. Getting these areas digitally enhanced and retouched is fine, as they are things that can easily be updated in real life and are generally well presented at the time of a viewing.

The intention of image retouching and enhancement is to provide the most appealing and realistic representation of a property. Often photos distort the real color or darken a home, and this is where retouching images is a great tool.

Photo editing is also a solution when you have tight deadlines and cannot arrange for photos to be taken when the property looks its best. If you are ever in doubt as to whether an image you are using could be considered deceiving, always include a disclaimer or even the original photos.

Edits That Help Enhance Your Listing Ethically

We have provided detailed information on what you cannot edit in your real estate photography, so here is a simple list of popular edits that are ok for property marketing:

Sky Replacement -If photos, where taken during a cloudy or rainy day, editing them to be blue or taken at dusk, is considered ok.

Item Removal - Removing unwanted furniture or clutter from a home is fine. As long as not permanent fixtures are taken out. This can be done with pool blankets and cleaners as well.

Perspective Corrections - Sometimes cameras can distort images, making straight lines look curved or a room seem smaller. Editing can be done to correct this and reflect what can actually be seen.

Virtual Staging - This is where furniture is edited into an image. This is the same as traditional staging as the furniture is not sold with the property. It is just important to remember that light fittings and window hangings cannot be edited.

Brightness and Contrast Adjustments - Often camera setting can distort images and make them dull or distort colors. It is perfectly fine to edit photos to improve colors and brightness to accurately portray a property.

Lawn Enhancement - Enhancing patchy lawn and making it a consistent green is considered an acceptable edit.

If you are ever in doubt that your real estate marketing could be considered misleading always include additional information or descriptions. Basic Image Enhancement is a great starting point for improving your listings.

Transaction Coordinators

a. 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.
6. Review the top violations by brokers and discuss the infraction and the law that is applicable.

Top 10 violations by agents

1. Misrepresentation, the misstating of some material feature of the property, is the most common type of lawsuit members face.

A closely related claim is failure to disclose, which is a failure to note some important feature of the property. Property disclosures in all categories also accounted for the second highest number of court cases between 2005 and 2006. Most commonly misrepresented property features are the foundation and structural features (20 percent of lawsuits). Other commonly alleged misrepresentations involve property boundaries, roofs, and termite problems.
The number of statutes and regulations addressing property condition disclosures rose by 31 percent in 2005 and 2006, which should reduce litigation, especially against real estate professionals.

Limit misrepresentation liability by using seller disclosure forms filled in by the seller (rather than the broker). Brokers should also document and disclose their sources of information and encourage the use of other professionals, like inspectors and attorneys, whenever appropriate. Also, avoid making predictions such as, “This well will never run dry,” or, “The value of this house is sure to appreciate.” They’re recipes for disaster.

2. Breach of fiduciary duty lawsuits accounted for the largest single number of residential real estate-related court cases reported in the past two years.

Many of them involved claims of undisclosed dual agency. NAR's Code of Ethics mandates agency disclosure, but laws governing the method and timing are different in each state. The broad common law agency duties are so poorly defined that many state associations have lobbied for statutory duties (written into law), allowing brokers to know exactly what duties they owe and what consumers can expect.

Limit fiduciary duty liability by providing continuing member education on your state's current laws on agency disclosure and by promoting the use of agency disclosure forms.

3. Fair housing violations account for the third highest number of reported decisions and can result in costly judgments.

Since state and local laws add protected classes such as [sexual orientation] to the federal discrimination laws, things can get tricky. [**Update:** REALTORS® updated their Code of Ethics to prohibiting discrimination in professional services and employment practices on the basis of sexual orientation (2011) and gender discrimination (2014).]

In recent years, some suits have been brought against MLSs because their members included remarks in listings displayed on the Internet, such as "no children" or "perfect for empty nesters," that allegedly violated fair housing law. Publishing such information on the Internet carries the same liability for the broker as does publishing it in print.

Limit fair housing liability by educating and training members about the fair housing laws. Also, encourage the documentation of all services offered or provided so that everyone is sure to get equal treatment.

4. Antitrust laws are intended to prevent unreasonable restraints of trade.

Examples of antitrust violations that impact real estate brokers are price fixing and group boycotts. Competing brokers should never engage in discussions of their commission rates or compensation they offer cooperating brokers or their sales

associates. Brokers must also avoid conduct that could lead to allegations that they agreed to refrain from doing business with a certain competitor.

Limit antitrust liability by adopting an office-wide policy addressing antitrust compliance regarding such issues as discussing commission rates with potential sellers. In addition to educating all sales associates about the compliance policy, offices should also avoid preprinting commission rates on standard form contracts or in advertising.

5. Lawsuits involving broker advertising can involve affinity programs, For Sale sign bans, and Internet advertising.

Advertising must always comply with state license law and regulations as well as the REALTOR® Code of Ethics. License laws frequently address requirements such as indicating the broker's status as a licensee in each ad. The 2007 Legal Scan shows that technology issues are also growing in importance, particularly in with regard to privacy, spam, and electronic solicitation while regulation of Internet advertising continues to increase.

Limit advertising liability by ensuring that all ads are truthful and not misleading. Practitioners must also comply with any special rules adopted in their state that govern the advertising of property or the promotion of real estate services on the Internet.

6. The status of salespeople as employees or independent contractors can impact a broker's liability.

It's estimated that 90 percent of brokers use independent contractors as their sales force. Although federal laws make it easier for real estate salespeople to qualify as independent contractors for purposes of federal tax law, state law may still be based on the common law that governs state income taxes, worker's compensation, and unemployment compensation.

According to the 2007 Scan, employment cases increased 12 percent in 2005 and 2006. Although many federal employment laws do not apply to real estate agents

working as independent contractors, it's interesting to note that the largest real estate-related award was $4.16 million to a sales associate in a case alleging sexual discrimination and harassment.

Steps to limit employment liability include educating members on your state law requirements to qualify as an independent contractor and advocating the use of written agreements between brokers and their sales associates.

7. Environmental issues, such as asbestos, lead-based paint, mold, carbon monoxide, and groundwater contamination, can turn into lawsuits when a broker fails to recommend that the buyer or seller retain an expert for evaluation.

Lead-based paint disclosure laws require that brokers advise buyers or tenants of any known lead-based paint hazards, provide purchasers or tenants with a federally approved lead-based paint hazard information pamphlet, and include specific language in all sales contracts or leases. In addition, purchasers are given 10 days to inspect for lead-based paint.

To limit environmental liability, provide member education refreshers on this topic and make sure you know what the common environmental issues and hazards are in your area. Brokers should monitor their salespeople's compliance with the lead-based paint disclosure and documentation requirements.

8. Real Estate Settlement Procedures Act (RESPA) violations occur when mortgage brokers, lenders, title services, or real estate brokers give or receive anything of value in return for referrals.

Although most referral fees are prohibited, the law expressly permits referral fees between two real estate brokers. Also, real estate brokers must disclose if they have an ownership in another service provider, such as a lender or insurance company to which they're referring a consumer.

More than 35 percent of the respondents believe RESPA issues, including kickbacks and affiliated business arrangements, are significant sources of current disputes. Fifty-four percent believe that the disclosure of settlement costs is at least moderately significant today.

Steps to limit RESPA liability include continuing education, a thorough understanding of the law's prohibitions, and strict compliance if any referrals are made among affiliated service providers.

9. Unauthorized practice of law spawns lawsuits whenever brokers or salespeople give out legal advice.

Generally speaking, courts have said that brokers are permitted to complete the blanks of a preprinted sales agreement that has been approved by an attorney, but may not draft documents or give legal advice.

In the past, many REALTOR® associations would meet regularly with the local bar association to determine the appropriate role of the broker and the lawyer in a real estate transaction. But the U.S. Justice Department came down hard on these types of alliances, saying that their purpose was to divide up the marketplace in violation of the antitrust laws. So if your association still addresses this subject with a local bar association, you may want to consider rescinding it.

Steps to limit legal advice liability include knowing the parameters of what brokers may and may not do in your state, and having members urge their clients to hire a lawyer if they have any legal questions.

10. Americans With Disabilities Act (ADA) violation suits have been brought against brokers who fail to do what is "readily achievable with reasonable effort and expense" to serve clients with disabilities.

This includes making sure that the broker's office, which is a public accommodation, is equipped with ramps, curb breaks, and other considerations. Some lawsuits involving

the ADA also deal with employment provisions (which apply to offices with 15 or more employees) and brokers who discriminate against a qualified person with a disability.

Broker Personal Safety

A. Teach safety practices when showing homes and conducting Open Houses.

As a REALTOR®, it's important you have a personal safety protocol in place that you use every day with every client, like when meeting new clients, showing properties or sharing information online. There are a variety of tools you can add to your personal safety protocol, such as the smartphone apps and safety products listed here.

Note: The safety applications and products listed are for informational purposes only. They are not endorsed by nor have they been vetted by the National Association of REALTORS®, and their inclusion on this website does not constitute a recommendation by NAR and should not be inferred as suggesting a preference over other applications or products currently available in the market. The information provided is a selection of safety resources designed to help you determine what tools may best fit into your personal and professional life.

A. InstaAlert
B. KATANA Safety
C. Lockly Vision
D. Ora
E. Personal Emergency Transmitter
F. Prop Lock
G. Ripple Safety
H. V.Alrt

APPENDIX I: OPTIONAL COURSE CURRICULUM RESOURCE MATERIALS

a. Washington State Department of Licensing Real Estate Program Webpage: http://www.dol.wa.gov/business/realestate/index.html

b. National Association of Realtors'® Federal Issues Tracker: www.nar.realtor/political-advocacy/nars-federal-issues-tracker

c. Washington Legislature Webpage http://leg.wa.gov/

d. YouTube Video relating to Form 35 https://youtu.be/y-cFjX9LsXs

e. NAR's Pathways to Professionalism:
https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/pathways-to-professionalism

f. NAR's Buyer's and Seller's Guide to Multiple Offer Negotiations: https://www.nar.realtor/about-nar/policies/professional-standards-and-code-of-ethics/a-buyers-andsellers-guide-to-multiple-offer-negotiations

g. Inspection Addendum:
YouTube video regarding inspection addendum for reference option:
https://www.bing.com/videos/search?q=youtube+insepction+addendum&view=detail&mid=FF7B847A0A0 FA24D28D6FF7B847A0A0FA24D28D6&FORM=VIRE

h. Forms -Updated Forms https://www.nwmls.com/northwest-mls-to-publish-revised-forms-on-july-11/
   - 35E Escalation Addendum
   - 22EF Evidence of Funds
   - Inspection Addendum
   - 35R Inspection Response
   - Closing and Possession Provisions
   - 22A Financing Continency Addendum
   - 22AD Additional Down Payment

National Association of Realtors Buyers and Sellers Guide to Multiple Offer Negotiations https://www.nar.realtor/about-nar/policies/professional-standards-and-code-of-ethics/a-buyers-and-sellersguide-to-multiple-offer-negotiations

Real Estate Excise Tax Legislation
Washington Realtors Legislative Update 2019 Part 1

Real Estate Educators https://www.dol.wa.gov/business/realestate

Course Search (Chrome Browser)
https://professions.dol.wa.gov/s/course-search

How to get your license
Real Estate Broker - https://www.dol.wa.gov/business/realestate/brokerslicense.html
Managing Broker - https://www.dol.wa.gov/business/realestate/mngbrokerslicense.html

n. Fingerprinting & Background Checks
a. WAC 308-124A-700
b. https://www.dol.wa.gov/business/fingerprinting.html