OBJECTIVES

Upon completion of this section the student should be able to:

✓ Demonstrate an understanding of the legal and regulatory environment affecting real estate licensees in Washington State

✓ Describe any specific duties imposed on licensees by the state of Washington in regards to becoming a licensee including prohibitions

AGENCIES THAT REGULATE THE REAL ESTATE INDUSTRY

FEDERAL AGENCIES

HUD - (Housing and Urban Development) assists home owners by developing various regulations and acts. Some of the divisions within HUD include: Home Improvement Branch, Single Family Housing Program Development, Inspector General’s Fraud Hotline, Office of Manufactured Housing Program, Office of Fair Housing and Equal Opportunity (FHEO) and the Office of RESPA and Interstate Land Sales. One of the most important regulations relating to the real estate industry is:

RESPA – The Real Estate Settlement Procedures Act (RESPA)
RESPA was first passed in 1974 and was established to protect consumers during residential real estate financing transactions. Its main purpose is inform home buyers as to the estimated and actual costs of settlement services (the fees and services involved in completing the lending transaction) and to eliminate unscrupulous practices that can increase the cost of settlement services, including kickbacks, unnecessary fees and referral fees for services provided by the affiliated companies. RESPA is regulated by HUD (Housing and Urban Development). We will have a much more detailed look at RESPA later in the course.

Department of the Treasury
Oversees the Internal Revenue Service (IRS) in relationship to property taxation
Federal Reserve
The Federal Reserve is responsible for implementing the Truth in Lending Act of 1968. Also known as TILA or Regulation Z

US Attorney General
US Attorney General has the authority to enforce criminal or civil Anti-Trust violations

FBI
Federal Bureau of Investigation- civil actions of Anti-Trust violations may be investigated by the FBI

DOJ (Department of Justice)
The DOJ administers the Americans with Disabilities Act (ADA) and has the authority to investigate criminal or civil Anti-Trust violations

FHA (Federal Housing Authority)
The FHA Insures loans and offers programs for buyers

The Federal Housing Finance Agency
The federal Housing Finance Agency was created to oversee Fannie Mae and Freddie Mac

Commission on Civil Rights, Fair Housing Civil Rights
Administered through HUD

Federal Emergency Management Agency (FEMA)
Oversees Disaster Assistance and Flood Insurance Program

Department of the Interior
Oversees the Bureau of Reclamation, Minerals Management Service, Bureau of Land Management, and the Geological Survey

Department of Veterans Affairs (VA), (Veterans Benefits Administration Division) guarantees home loans for veterans

EPA
Publishes “A Brief Guide to Mold, Moisture and Your Home” and “Protect Your Family From Lead In Your Home” pamphlets

Federal Trade Commission (FTC)
The FTC promotes competition in the marketplace so that consumers have a wider choice for the goods and services that they purchase. Consumers may file complaints about Anti-Trust violations with the FTC which could result in an extensive investigation and a cease and desist order that would be placed upon the firm or person in violation
WASHINGTON STATE REAL ESTATE REGULATORY AGENCIES

Washington State Housing Finance Commission
Aids in financing, education for licensees and consumers, promotes affordable housing, and offers tax credits to home buyers

Washington State Real Estate Commission
Oversees the development and administration of licensing laws and regulations

Attorney General of Washington, Consumer Protection Division
The Attorney General leads a team of attorneys who represent state clients and the public interest as directed under state law

Department of Ecology State of Washington
Oversees shorelands, air quality and water quality

Washington State Human Rights Commission, Fair Housing Division
Develops and enforces Fair Housing Laws in Washington State

Department of Revenue Washington State
Oversees real estate excise tax on sales and water rights transfers

The Governor and State Legislators
Develops bills and statutes which effect how real estate is transacted

LOCAL AGENCIES THAT REGULATE REAL ESTATE

Local MLS-
Develops and enforces rules and regulations which govern how members cooperate with each other

The Mayor and City Planning Commission-
The City Planning Commission usually advises the mayor, city council and city departments on broad planning goals and policies for the physical development of the city

Local Planning and Land Use Bureaus-
Administers land use permits

City and County Housing Authorities-
Provide housing assistance and subsidies for low-income residents and seniors citizens.

Local Building Department -
Advises zoning compliance

County Tax Assessor-
Is responsible for assessing and collecting property tax
SPECIFIC DUTIES IMPOSED ON LICENSEES BY THE STATE OF WASHINGTON IN REGARDS TO BECOMING A LICENSEE INCLUDING PROHIBITIONS

The following Revised Code of Washington laws deal with duties of a licensee, unprofessional conduct and disciplinary actions.

**RCW 18.85.361**

**Disciplinary action — Grounds. (Effective until July 1, 2010.)**

In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action against any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any of the sanctions specified in RCW 18.235.110 for any holder or applicant who is guilty of:

1. Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or RCW 18.86.030 or the rules adopted under those chapters or section;

2. Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

3. Knowingly committing, or being a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

4. Accepting the services of, or continuing in a representative capacity to any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;
5. Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract, or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefore, shall be prima facie evidence of such conversion;

6. Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

7. Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

8. Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

9. Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

10. Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

11. Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal;

12. Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

13. Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

14. Misrepresentation of his or her membership in any state or national real estate association;
15. Discrimination against any person in hiring or in sales activity, on the basis of any of the provisions of any state or federal antidiscrimination law;

16. Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

17. Failing to preserve for three years following its consummation records relating to any real estate transaction;

18. Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

19. Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

20. To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

21. Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

22. In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

23. Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetence;

24. Acting as a vehicle dealer, as defined in RCW 46.70.011, without having a license to do so; or

25. Failing to ensure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson.
DUTIES OF LICENSEE

Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee 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 licensee 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 licensee 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 licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, 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 whichever occurs earliest; and
- To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee 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 licensee 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 licensee to be reliable.
The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

1. The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or “nolo contendere” is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

2. Misrepresentation or concealment of a material fact in obtaining or renewing a license or in reinstatement thereof;

3. Advertising that is false, deceptive, or misleading;

4. Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;

5. The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;

6. Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:

   a. Not furnishing any papers or documents requested by the disciplinary authority;

   b. Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;
(c) Not responding to a subpoena issued by the disciplinary authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;

(7) Failure to comply with an order issued by the disciplinary authority;

(8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);

(9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;

(10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;

(11) Misrepresentation in any aspect of the conduct of the business or profession;

(12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

(13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action; and

(15) Engaging in unlicensed practice as defined in RCW 18.235.010.