



REALTOR®

Washington REALTORS®
Education Department

Phone: 800.748.7053

Fax: 360.357.6627

www.warealtor.org



Current Issues in WA Residential Real Estate

Instructor: Jan Ellingson

Course #: C0029CORE1011

Clock hours: 4.5

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Instructor Biography



**Jan Ellingson ABR, ABRM, CRB, GRI, e-Pro,
Burlington**

Jan Ellingson is an ABR, ABRM, CRB, GRI, and e-Pro. She is your current state Washington REALTORS® President, and is a past Treasurer. She is a past President of the North Puget Sound Association of REALTORS®, and has served on numerous REALTOR® committees on the local, state and national levels. She is a National Director, and has built four homes around the country with the REALTOR® Habitat for Humanity project, as well as leading a team of 16 REALTORS® to Louisiana for a Katrina Disaster Relief build with Habitat.

Further, she is currently a member of the Real Estate Buyer's Agent Council (REBAC), the Women's Council of REALTORS®; serves on the Northwest Multiple Listing Service Disciplinary Review Board, the Advisory Board to the Skagit County Planning and Development Department, and is Vice-Chair of the Skagit County Planning Commission. She also served on the Department of Licensing's RCW 18.85 review Task Force. As a member of the Washington REALTORS® faculty she teaches the ABR, ABRM, and WCR Designation Courses, Professional Standards and Ethics, the state CORE class, and Environmental Hazards.

Finally, and most important, Jan is a practicing real estate professional as the Managing Broker of Executive Real Estate, Inc. in Burlington, Washington. She lives in Sedro Woolley with her husband Van, and in her spare time she enjoys singing and golfing.

Short Sales And Why They Are Not For Everyone!

First things first - - protect yourself by giving seller the DFI/DOL Advisory on Short Sales: <http://www.warealtor.org/assets/short-sale-seller-consumer-advisory.pdf> (or just follow the link from the WAREaltor.org website.)

Definition

- The real property is encumbered for more than it's value AND
- The seller does not have the assets to pay the difference between the value and the debt.

Fundamental Understandings

- Seller is allowed to take NOTHING from the transaction.
- First position lender calls all the shots.
- Junior lenders can defeat a short sale.
- The deficiency is the difference between the debt recorded against the property and the proceeds generated from the sale of the property. (Not be confused with a "deficiency judgment" which can only be taken following a judicial foreclosure.)
- A short sale is not the best option for all sellers who are upside down or in default.
- You must be prepared to decline some (or all) short sale property listings.
 - Get training and experience!

Factors Indicating That A Short Sale May Not Be A Good Option For A Seller

- Sellers' lender will not discharge the deficiency.
 - Problem: Long term liability - When seller took loan, signed note and deed of trust. Short sale releases deed of trust but promissory note still exists unless specifically discharged
- Sellers' debt is the result of a large equity refinance and the equity was not used to improve the property.
 - Problem: Potential tax consequences - If non-owner occupied, seller pays income tax on any debt that is released and discharged. If owner occupied, no income tax if purchase money mortgage, rate and terms refinance or equity refinance with all equity reinvested in property improvements
- More than one lien holder encumbers the property.
 - Problem: Logistical difficulties closing the transaction and long term liability.

- There is insufficient time prior to foreclosure.
 - Problem: Logistical
- Seller indicates an unrelenting requirement to exit the transaction with cash.
 - Problem: Impossible and creates risk of lender fraud
- Seller's debt unrelated to the house exceeds seller's ability to repay.
 - Problem: Short sale will not solve seller's problem

Short Sale Alternatives

- Refinance
 - Typically only available if seller is not already in default and has sufficient income to support new mortgage payments.
- Loan modification or lender workout
 - Strategic Default
 - Work with existing lender to create new loan terms that make repayment possible: ARM to fixed; extend repayment term; reduce or skip payments
 - Real estate license is not a license to assist with a refi or loan mod
- Deed in lieu of foreclosure
 - Only available if seller has just one lien
- Foreclosure
 - Non-judicial
 - Foreclosing lender takes title to the property following notice and a trustee's sale (no lawsuit);
 - Entire balance owing on foreclosed lien is eliminated.
 - Junior liens are not discharged if sale of property fails to generate funds sufficient to repay junior liens.
 - Judicial
 - Lender files lawsuit against debtor for foreclosure.
 - Property is sold at foreclosure sale.
 - If proceeds insufficient, lender takes "deficiency judgment."
 - Debtor has one year right of redemption.
 - Necessary for agricultural property
- Bankruptcy
 - Debtor surrenders all assets to bankruptcy court for payment of repayable debts and discharge of all others.

Do You Really Want To Handle Short Sales?

State Law: A person who engages in short sale negotiations must have a loan originator's license. There is an exception to this requirement for real estate brokers who provide services in a transaction they are handling as a real estate broker, for only "customary real estate broker's or salesperson's commission".

"RCW 19.146.020 Exemptions from chapter.

(1) The following are exempt from all provisions of this chapter: . . .

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney; . . .

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction; . . ."

What is included in the performance of "duties as a real estate broker"?

What is "the customary real estate broker's or salesperson's commission"?

Federal Law:

MARS – A new federal regulation know as "Mortgage Assistance Relief Services" took effect December 29, 2010 and is intended to prevent MARS providers from collecting fees upfront, for services that are never performed and/or results that are never achieved.

It is critical for REALTORS to be aware that a real estate broker may violate MARS not only by providing non-compliant negotiation services but also by REFERRING a non-compliant negotiator to a consumer. REALTOR firms should take steps to insure that their brokers have access to a list of short sale negotiation providers who are compliant with state and federal laws. Significant penalties, both legal and regulatory, may be imposed on any real estate broker who refers a short sale negotiator who is not compliant with both state and federal short sale negotiator requirements.

Firms may want to consult their own legal counsel for assistance in drafting and executing indemnification agreements with short sale negotiators who substantiate themselves as compliant with all aspects of the law and who evidence the financial wherewithal to indemnify the REALTOR firm in the event of non-compliance. REALTORS who provide short sale negotiation services should hire legal counsel to assist broker in ensuring broker's compliance with state and federal authority.

Here is what the rule does:

The rule prohibits the collection of any advance fees, fees paid prior to the consumer signing an agreement with lender regarding the terms of the short sale agreement.

The rule requires negotiators to provide certain disclosures including, among others, that the consumer may stop using the negotiator's services at any time, that no payment is required if the consumer does not agree to the short sale negotiated, the amount of compensation due if the short sale agreement is entered, that there is no guarantee of outcomes, and if the negotiator advises, in any manner, that the consumer stop making mortgage payments, that the consumer could lose their home as a result. (See Statewide Forms 48A and B.)

The rule forbids a negotiator from advising a consumer not to contact the consumer's lender and from making misrepresentations including, among others, the likelihood of success, the time required to complete negotiations, the existing or negotiated terms owing from consumer and the fact that the consumer will receive legal representation.

The rule establishes recordkeeping requirements for a short sale negotiator.

The rule prohibits waiver of any provisions of the rule by any consumer and creates a rule violation for any person who attempts to obtain such a waiver.

The rule exempts attorneys who provide mortgage assistance relief as part of the practice of law and who are licensed to practice law in the state where the property or the consumer is located. Further, the rule requires any attorney who collects an advance fee for MARS to deposit that fee in a trust account regulated by the attorney's licensing authority (in Washington, the Washington State Bar Association).

Here is what the rule does not do:

The rule does not establish any cap on the amount that may be charged.
The rule does not dictate who may or may not pay for MARS.
The rule does not create any licensing requirement for MARS providers.

As defined by the rule, a short sale negotiator is any person or service who offers, in exchange for compensation, to assist a consumer in negotiating, obtaining or arranging a short sale of a dwelling. A dwelling is 1-4 residential units, owner or non-owner occupied, real or personal property.

If You Choose to Provide Short Sale Assistance, What Does Your Real Estate License Authorize You To Do?

- Order preliminary commitment
 - Confirm number and identity of creditors
- Contact lender's loss mitigation department (written authorization)
 - Determine willingness to entertain short sale, discharge deficiency
 - Determine lender's process and obtain paperwork

- Provide seller with CMA
- With seller, establish list price
- List property in MLS
 - Disclose short sale
- Attract buyer
- Negotiate purchase agreement
 - ALWAYS use 22ss
 - Present offer(s) to lender along with complete short sale package
- When conditional approval arrives: REFER SELLER TO LEGAL COUNSEL
 - When seller asks about deficiency: REFER TO LEGAL COUNSEL
 - When seller asks about taxes: REFER SELLER TO LEGAL COUNSEL
 - Confirm junior lienholders willingness to accept payoff
 - Confirm sufficient funds to pay all seller closing costs including commissions

Beware of Short Sale Negotiators

Must have real estate license, loan originators license or law license. If real estate license, must provide services in a transaction they are handling as a real estate broker, for only "customary real estate broker's or salesperson's commission".

- Do not refer unlicensed short sale negotiators!
- Carefully consider compensation to short sale negotiator
 - Impact on buyer willingness to purchase
 - Impact on buyer agent's eagerness to show property

Use Forms Provided To You

- 22SS
 - Creates binding purchase agreement
 - Contingency for seller
 - Can seller accepting competing offers?
 - Computation of Time
 - Inspections, earnest money, financing contingency
 - Buyer ability to terminate while awaiting lender approval
- 48A and B
 - Only necessary if broker is providing short sale negotiation services.

CARBON MONOXIDE, SB 5561

Carbon monoxide detectors must be installed in all new residential structures with fuel fired appliances and/or an attached garage starting January 1, 2011.

All existing residences with fuel fired appliances and/or an attached garage must be equipped with a carbon monoxide detector by January 1, 2013. There is an exception for owner-occupied residences, legally occupied by July 1, 2010. In other words, if owner occupied on July 1, 2010, no requirement to install CO detector unless property becomes non-owner occupied. These rules are subject to change before January 2013.

LABOR & INDUSTRIES REQUIREMENTS (RCW 51.12)

1. Brokers are required to pay worker's compensation ("industrial insurance") for all agents licensed to broker.

[In a real estate office, the premium for clerical staff is the lowest, followed by sales agents, followed by property managers.]

Brokers are required to pay industrial insurance for all agents, though it appears that in recent history, many were unaware of that obligation. It appears that many real estate brokers are not aware of their requirement to pay industrial insurance for all agents licensed to the broker. They argue that since agents are independent contractors and not employees, there is no obligation to pay industrial insurance for agents. However, the State Court of Appeals rejected that argument in 1993. Industrial Insurance must be paid, quarterly, to the Department of Labor and Industries for each real estate agent licensed to a broker. Compliance requires filing a quarterly report and payment of industrial insurance premiums for the current reporting period and the previous four reporting quarters.

2. Know where to secure the current rates for real estate and property management services.

If a broker has never paid Industrial Insurance Premiums for any employees or agents, then the first step toward compliance is to re-file a master business license application through the Department of Licensing, indicating on the application that the business has employees. The process progresses more efficiently if broker files the application on-line rather than using paper forms. (<http://www.dol.wa.gov/business/file.html>) After the master business license application is submitted, broker will be contacted by an L&I

account manager who will assist broker in getting the paperwork necessary to satisfy reporting obligations and determine amounts owing.

If broker has previously paid Industrial Insurance for employees, then broker only needs to contact broker's L&I account manager to determine the rate code and amounts owing for broker's agents for the prior four quarters. Once a broker's account is established, the broker will receive a rate notice at the end of every year identifying the insurance rate and the portion broker can require agents and employees to pay for the following year.

The standard insurance rate applied to most real estate offices is \$0.1388 times the number of hours worked and broker is allowed to deduct \$0.0509 of that amount from compensation paid to the agent or employee. If reporting based on an assumed 8 hours per day, there are 480 hours per licensee, per quarter. The amount owing, based on this calculation, is less than \$67 per licensee, per quarter. Brokers may require that approximately \$24 of that be paid directly by agent or employee.

These rates and the contribution that can be required of employee or agent will vary based on the claims history for each broker. Accordingly, brokers must consult with their L&I account manager, or refer to the annual rate notice sent to broker at the end of the previous year, to determine the exact amount owing.

3. Understand the benefits from L&I Coverage.

While the payment of Industrial Insurance is viewed by many as only a monetary obligation, there is actually a significant benefit that flows to real estate brokers from the payment of Industrial Insurance. If an employee, and in this case, an agent, is injured in the workplace, the employee or agent will be prohibited from suing broker for recovery of lost time or medical expenses if the broker paid Industrial Insurance premiums for the injured worker. The employee or agent must take recovery of their losses from the Department of Labor and Industries, not from the Broker.

If an agent or employee suffers a work-related injury, the medical provider will submit the claim directly to L&I. However, broker has the right to be informed of the claim, amounts paid and to know what is happening with respect to claims managed under broker's policy. If only medical costs are claimed by an employee or agent, broker's rate will not be affected. If employee or agent also makes a wage claim, broker's rate premium is likely to increase. A wage claim is paid to a real estate agent based on prior years tax records showing the amount received in commissions.

4. Know how to comply with the record keeping requirements.

Reporting from a broker's office must be handled in one of two ways. Broker can either pay based on the amount of time actually spent working by each agent and employee, or broker can pay premiums based on an assumed eight hours per day or 160 hours per month for each agent and employee. The critical issue is that broker must select one

option or the other and apply it to every agent and employee in broker's office. Broker cannot pay a portion of the premiums based on actual hours worked by some and an assumed eight hours per day or 160 hours per month worked by others. If reporting actual hours worked, it is essential that agents and employees maintain a calendar showing the hours worked on a daily basis. In any audit, that calendar must be produced for any agent or employee who reported actual hours worked. For this reason, the vast majority of brokers report the entire office on an assumed eight hours per day or 160 hours per month.

Real Estate Licensing Law Relating to the Referral of Title Insurance Providers (RCW 18.85.053)

On March 20, 2009, new rules were implemented by the Washington State Insurance Commissioner limiting what any title company can do for any real estate agent. Prior to implementation, title companies were limited by a blanket prohibition against spending more than \$25 on any person per year. The \$25 limit no longer exists. It has been replaced by new rules that identify, with specificity, the items that can and cannot be given to real estate licensees and other members of the public.

In addition, the Real Estate Licensing Law (RCW 18.85.053) was revised, making it a violation of the Licensing Law for licensees to receive anything from a title insurance company in violation of the Insurance Commissioner's rules. Previously, only a title insurance company would get into trouble for violating the Insurance Commissioner's rule. Now, if a real estate licensee or broker receives anything in excess of what a title insurance company is allowed to give, the real estate licensee and broker can also be disciplined by the Department of Licensing.

Following is an identification of some specific items that insurers can give to licensees and some specific prohibitions regarding what title companies cannot give. This is not an exhaustive list. The Insurance Commissioner's website has a link to complete rules.

- 1) **A title company may give information about a parcel of real property, a "listing package," consisting of only: (a) last deed of record; (b) deeds of trust, mortgages, and real estate contracts recorded against title; (c) map showing location and dimensions; (d) restrictive covenants; (e) tax information; and (f) characteristics such as number of rooms, square footage and year built.**

This listing package may be given by the insurance company without any requirement for compensation. The title insurance company can only give the "listing package" relative to a specific parcel and cannot give similar information about multiple properties in the same area. A title company may no longer give, without charge, "farm packages" containing information such as comparable sale information, demographics, appraisals,

estimates, or income production potential. In the “listing package,” the title company may not reach any conclusions regarding matters of marketable ownership or encumbrances. Without compensation, the title company cannot give a licensee any advertising or marketing information or materials that would benefit the licensee.

2) The title company must collect cancellation fees for preliminary commitments that do not evolve into purchased title policies.

A title company cannot issue a preliminary commitment unless it actually receives payment for any cancellation fee within the earlier of 180 days of issuance of the commitment or 60 days of when the title company should reasonably have known that the commitment was cancelled. Essentially, what this means, is that many title companies will require licensees or sellers to pay the cancellation fee at the time the commitment is ordered. If the cancellation fee is paid at the time the commitment is ordered, the fee can be applied to the eventual purchase of the policy. If the policy is never purchased, the title company will be in compliance with this rule.

3) A title company may not advertise, in any manner, for or with a licensee.

A title company may not advertise or promote the listings of real property for any real estate licensee. This limitation prohibits a title insurance company from sharing ad space with a licensee, even if the insurance company pays its pro rata share of the ad space. No title company advertisement may be placed in a publication that is published or distributed by or on behalf of a licensee, including but not limited to, web sites, flyers, postcards, for sale signs or flyer boxes. Title companies may only advertise in the following media: newspapers; telephone directories; internet search engines; television stations; radio stations and with licensees who do not act as licensees pursuant to the Agency Law (RCW 18.86).

4) Title companies are significantly restricted with respect to local Association activities.

Under the new rules, local REALTOR® Associations are considered “trade associations.” The rules establish clear guidelines as to what a title company may and may not give to a “trade association.”

A title company may donate the time of its employees to serve on a trade association committee and may contribute to or sponsor a trade association event only if all the following conditions are met: the association event benefits all members equally; if a specific member is uniquely benefited, it is through a random process; and solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount. In addition, the company’s sponsorship may not exceed one thousand dollars per event and only three events per year may be sponsored by a title company. If the thousand dollar limit is not reached in one event, the balance may not be carried over to another event. If the title company operates in more than one county, these expenditure limits apply separately to each county.

A title company may pay for its employees and a single guest of each employee to attend trade association events only if all of the following conditions are met: the title company pays a fee equal to fees paid by members of the association; the employee and guest actually attend the event (except when attendance is prevented by an emergency); and the guest of the employee is not a real estate licensee (except where the guest is related to the employee by blood, marriage or domestic partnership). Trade association events include, but are not limited to, conventions, award banquets, symposiums, educational seminars, breakfasts, lunches, dinners, receptions, cocktail parties, open houses, sporting activities and other similar activities.

5) With the exception of money, gift cards, food and beverages, a title company may give something of five dollars value or less with its preprinted company logo so long as the item does not contain the name, logo or any reference to the recipient.

A title company may give these limited promotional items to a licensee but the items must promote the title company and not the licensee who receives the item. Title companies may not give any other gifts or contributions directly to a licensee including but not limited to: flyer boxes and stands; for sale signs and posts; office supplies; postcards, stamps, flyers, newsletters, folders or invitations. A title company may not sponsor, subsidize, supply prizes or labor, or otherwise give things of value for activities of a licensee promoting either the licensee's business or a particular listed property.

6) Meals may be purchased for licensees only under strict guidelines.

When a title company buys a meal for a licensee, a title company employee must be present during the meal, there must be substantial and substantive title insurance business discussion directly before, during or after the meal, no more than four individuals may be provided a meal in a single day and the title company may not spend more than one hundred dollars per individual per year for meals. The permitted meals do not include open houses at a real estate office or at a property listed for sale. Invitation to a meal may not be responsive to the referral of business to the title company.

The Insurance Commissioner's rules are substantially longer and more complicated than this list. Near the end of the rules, there is a long list of potential gift items that are specifically prohibited. Before a REALTOR® receives anything from a title company representative, the REALTOR® should be familiar with the complete rules and prohibitions. Be aware that these rules are new to title insurance companies as well and it may not be wise to rely solely on a title company's presumed knowledge of the limitations. REALTORS® must take precautions against receiving anything from a title company that could inadvertently violate these rules. Again, a complete set of the new rules can be found on the Washington Insurance Commissioner's website.

7) Brokerages may not deny any title company the same access to office as is provided to any other title company.

If a brokerage allows any title company access to broker's office to place any advertising, such as cards or flyers, brokerage must allow the same access to any competing title

company. Brokerage may not allow access to only one or some title company(ies) while prohibiting any other(s) from the same access.

8) Brokers and licensees may not require consumers to obtain title services from a title company where the licensee has an interest.

If a referral is made to a consumer for utilization of a title company's services and the referring licensee has any interest in that title company, licensee must disclose that interest (relationship) and shall not require the consumer to utilize the service of that title insurer. This issue is regulated under state licensing law as well as by the federal Real Estate Settlement Procedures Act.

HOME INSPECTOR REFERRALS (RCW 18.85.035 & WAC 308-124C-050)

- 1) The Washington Administrative Code mandates that real estate licensees disclose any business or familial relationship they have with a referred inspector.**

WAC 308-124C-050 — Home inspector referrals.

Each licensed designated broker will establish a written office policy that includes a procedure for referring home inspectors to buyers or sellers. The policy will address the consumer's right to freely pick a home inspector of the buyer's or seller's choice and prevent any collusion between the home inspector and a real estate licensee.

If a licensee refers a home inspector to a buyer or seller with whom they have or have had a relationship including, but not limited to, a business or familial relationship, then full disclosure of the relations must be provided in writing prior to the buyer or seller using the services of the home inspector.

The term "familial" means a family relationship. If agent is related to the inspector in any way, that relationship must be disclosed. The term "business relationship" means that agent has done business with the inspector previously, even if unrelated to inspection services. For example, agent may have hired inspector to perform an inspection for agent, agent may have sold property to or for the inspector or agent and inspector may have had some other, unrelated, business dealings between them. However, the mere fact

that agent has referred the inspector to others in the past, or has included the inspector on a list of recommended inspectors, does not constitute a “business relationship” requiring disclosure.

2. Use Statewide Form 41D to facilitate proper disclosure.

The statewide forms system includes a form for the disclosure of relationships between agents and inspectors (Form 41D). Licensees should complete this form to include the name of any frequently referred inspector and any relationship and be prepared to provide a copy of the disclosure to any buyer or seller to whom the referral is made.

3) WAC 308-408C establishes Home Inspector Standards of Practice.

As of September 1, 2009, home inspectors must be licensed. This means that agents who refer home inspectors must refer licensed home inspectors.

The Department of Licensing hosts a website identifying all licensed inspectors. Beware, however, inspectors are listed under the county out of which they are licensed. In addition, if an inspector was actively engaged in home inspecting by July 2008, they are not required to be licensed until July 1, 2010. Accordingly, if you do not find your favorite inspectors on the DOL website, call the inspector to inquire as to their licensing status.

Also, new law prohibits an inspector or any person with whom the inspector has a financial interest, from performing work on a property within one year of completing the inspection.

WAC 308-408C-020

In order to ensure the integrity and high standard of skill and practice in the home inspection profession, the following rules of conduct and ethics shall be binding upon the inspector.

The home inspector must:

- (1) Provide home inspection services that conform to the Washington state home inspectors' SOP.
- (2) Provide full written disclosure of any business or familial relationships or other conflicts of interest between themselves and any other party to the transaction. The parties may include, but are not limited to, buyers, sellers, appraisers, real estate licensees, mortgage representatives, title companies, vendors and service contractors.
- (3) Act as an unbiased party and discharge his or her duties with integrity and fidelity to the client.

- (4) Perform services and express opinions based on genuine conviction and only within the inspector's area of education, training, or expertise.
- (5) Not conduct a home inspection or prepare a home inspection report that knowingly minimizes, compromises or attempts to balance information about defects for the purpose of garnering future referrals.
- (6) Not provide services that constitute the unauthorized practice of any profession that requires a special license when the inspector does not hold that license.
- (7) Not accept compensation for a home inspection from more than one party without written disclosure to the inspector's client(s).
- (8) Not for one year after completion of the inspection repair, replace, or upgrade for compensation components or systems on any building inspected — this section applies to the inspector's firm and other employees or principals of that firm or affiliated firms.
- (9) Not provide compensation, inducement, or reward directly or indirectly, to any person or entity other than the client, for the referral of business, inclusion on a list of recommended inspectors or preferred providers or participate in similar arrangements. The purchase and/or use of low-value advertising or marketing services or products that does not exceed ten dollars per item, is not considered inducement or reward.
- (10) Not disclose information contained in the inspection report without client approval or as required by law. However, at their discretion inspectors may disclose when practical observed safety or health hazards to occupants or others that are exposed to such hazards.
- (11) Not advertise previous experience in an associated trade as experience in the home inspection profession. An inspector's advertised inspection experience will reflect only the inspector's experience as a home inspector and inspectors shall not advertise, market or promote their home inspection services or qualifications in a fraudulent, false, deceptive or misleading manner.
- (12) Not accept a home inspection referral or perform a home inspection when assignment of the inspection is contingent upon the inspector reporting predetermined conditions.

Licenses Conducting Property Management and the Firm's Policy on Property Management

- 1) Real estate licensees cannot perform property management without approval from their designated broker and property management is a real estate activity for which designated broker has responsibility for property management activities done by his or her licensees.**

WAC 308-124D-050

(1) All properties managed by the broker must be supported by a written management agreement signed by the owner and broker and retained. The management agreement must state as a minimum: (a) The broker's compensation (b) the type (i.e., apartments, industrial) and number of individual units in the project or square footage (if other than residential) (c) whether or not the broker is authorized to collect funds and disburse funds and for what purposes (d) authorization, if any, to hold security deposits and the manner in which security deposits may be disbursed and (e) the frequency of furnishing summary statements to the owner.

(2) All properties rented or leased by the firm must be supported by a written rental or lease agreement.

- 1. WAC 308-124D-050 describes the necessary agreements, record keeping, and funds management procedures associated with property management as described by the Washington Administrative Code including treatment of funds and trust funds.**

(3) Each owner of property managed by the broker must be provided a summary statement as provided in the property management agreement for each property managed showing: (The broker is to retain a true copy of this statement).

(a) Balance carried forward from previous summary statement.

(b) Total rent receipts.

(c) Owner contributions.

(d) Other itemized receipts.

(e) Itemization of all expenses paid.

(f) Ending balance.

(g) Number of units rented or square footage if other than residential.

(4) The broker may provide other services to owners of properties managed provided full disclosure to the owner is provided in writing of the broker's relationship with any and all persons providing such services, prior disclosure of fees charged, and permission is granted by the owner.

(5) Any amendment or modification to the property management agreement must be made in written form and signed by the owner and the broker and retained.

WAC 308-124E-012

Any real estate broker who receives funds or moneys from any principal or any party to a real estate or business opportunity transaction, property management agreement, or contract/mortgage collection agreement shall hold the funds or moneys in trust for the purposes of the transaction or agreement, and shall not utilize such funds or moneys for the benefit of the broker or any person not entitled to such benefit. Except as specifically provided in this section, funds or moneys received in trust shall be deposited in a federally chartered or approved banking institution or a Washington state banking institution approved by the banking division, department of general administration, state of Washington, or successor. The broker is responsible for depositing, holding, disbursing and accounting for funds in trust as provided herein.

(1) Bank accounts shall be designated as trust accounts in the firm or DBA name of the real estate broker as licensed.

(2) Interest credited to a clients account must be recorded as a liability on client ledger. Interest assigned or credited by written assignment agreement to the broker may not be maintained in the trust account. The broker is responsible to make arrangements with the financial institution to credit this interest to the general account of the firm.

(3) The broker shall establish and maintain a system of records and procedures approved by the director that provide an audit trail accounting for all funds received and disbursed, identified to the account of each individual client. Records and procedures described herein meet approval

requirements. Any alternative records or procedures proposed for use by a broker shall be approved in advance by the department.

(4) The real estate broker shall be responsible for deposits, disbursements or transfers of clients' funds received and held in trust, whether disbursed by personal signature, signature plate or signature of another person authorized to act on the broker's behalf.

(5) All funds or moneys received for any reason pertaining to the sale, renting, leasing or option of real estate or business opportunities or contract or mortgage collections shall be deposited in the broker's real estate trust bank account not later than the first banking day following receipt thereof; except:

...

(b) Checks, funds or moneys received as rent, contract payments or mortgage payments on real estate or business opportunities, owned exclusively by the real estate broker or the broker's real estate firm.

(c) For purposes of this section, Saturday shall not be considered a banking day.

(6) All checks, funds or moneys received shall be identified by the day received and by the amount, source and purpose on either a cash receipts journal or duplicate receipt retained as a permanent record.

(7) All deposits to the trust bank account shall be documented by duplicate deposit slip, validated by bank imprint, teller's stamp, or electronic transfer memo identifying the source of funds and transaction to which it applies. Receipt of funds by wire transfer are to be posted in the same manner as other receipts provided there is a traceable identifying number provided by the financial institution or transferring entity. The broker must also make arrangements for a follow-up "hard-copy" receipt for the deposit.

(8) An individual client's ledger sheet shall be established and maintained for each client for whom funds are received in trust, to which ledger sheet all receipts and disbursements shall be posted. The credit entries must show the date of deposit, amount of deposit, and item covered including, but not limited to "earnest money deposit," "down payment," "rent," "damage deposit," "rent deposit" "interest." The debit entries must show the date of the check, check number, amount of the check, name of payee and item covered. The "item covered" entry may indicate a code number per chart of accounts, or may be documented by entry in a cash receipts journal, cash disbursements journal, or check

voucher.

(9) The real estate trust bank account balance must be equal at all times to the outstanding trust liability to clients. The balance shown in the check register or bank control account must equal the total liability to clients.

(10) The broker shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account check register or bank control account.

(11) All disbursements of trust funds shall be made by check, or electronic transfer, drawn on the real estate trust bank account and identified thereon to a specific real estate or business opportunity transaction, or collection/management agreement. The number of each check, amount, date, payee, items covered and the specific client's ledger sheet debited must be shown on the check stub or check register and all data must agree exactly with the check as written.

(a) No disbursement from the trust account shall be made based upon wire transfer receipts until the deposit has been verified.

(b) The broker must make arrangements with the financial institution in which the trust account is located to provide a follow-up "hard-copy" debit memo when funds are disbursed via wire transfer.

(c) The broker shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(12) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(13) Commissions owed to another real estate broker may be paid from the real estate trust bank account. Those commissions shall be paid promptly upon receipt of funds. Commissions shared with another broker are a reduction of the gross commissions received.

(14) No deposits to the real estate trust bank account shall be made of funds:

(a) That belong to the real estate broker or the real estate firm, including funds to "open" the bank account or to keep the account from being "closed"; or

(b) That do not pertain to a client's real estate or business opportunity sales transaction or are not received in connection with a client's rental, contract or mortgage collection account.

(15) No disbursements from the real estate trust bank account shall be made:

(a) For items not pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account;

(b) Pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account in excess of the actual amount held in the real estate trust bank account in connection with that transaction or collection account;

(c) In payment of a commission owed to any person licensed to the real estate broker or in payment of any business expense of the broker. Payment of commissions to persons licensed to the broker or of any business expense of the broker shall be paid from the regular business bank account of the broker.

(d) For bank charges of any nature, including bank services, checks or other items, except as specified in WAC 308-124E-013 (1)(a) and (d). Bank charges are business overhead expenses of the broker. Arrangements must be made with the bank to have any such charges applicable to the real estate trust bank account charged to the regular business bank account, or to provide a separate monthly statement of bank charges so that they may be paid from the brokers business bank account.

(16) The provisions of this chapter are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back-up all data files.

(b) Receipt and check registers will be printed at least once monthly and retained as a permanent record. Reconciliation and trial balance will be accomplished at least once monthly, printed and retained as a permanent record.

(c) The broker will maintain a printed, dated source document file to support any changes to existing accounting records.

(d) If the program has the ability to write checks, the check number must be preprinted on the check or retained voucher copy by the supplier. The

program may, if desired assign suffixes or subaccount codes before or after the check number for identification purposes.

(e) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution computer.