

ENROLLED ACT NO. 12, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

AN ACT relating to real estate licensees; clarifying roles and relationships in real estate transactions as specified; specifying duties and obligations of real estate licensees; clarifying and specifying liabilities of parties and licensees in real estate transactions; limiting confidentiality of communications between customers and licensees as specified; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-28-310 and 33-28-311 are created to read:

33-28-310. Licensees working with buyers and sellers as customers; duties; exceptions.

(a) A licensee working with a buyer or seller who is a customer shall owe the following duties and obligations to the buyer or seller:

(i) To exercise reasonable skill and care including:

(A) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale;

(B) Advising the parties to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(C) Accounting in a timely manner for all money and property received by the licensee;

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(D) Keeping the parties fully informed regarding the transaction;

(E) Assisting the parties in complying with the terms and conditions of any contract which may include closing the transaction;

(F) Disclosing to all prospective buyers any adverse material facts actually known by the licensee, including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property and any environmental hazards affecting the property required by law to be disclosed;

(G) Disclosing to any prospective seller all adverse material facts actually known by the licensee, including but not limited to adverse material facts pertaining to the buyer's financial ability to perform the terms of the transaction.

(ii) To comply with all requirements of this article;

(iii) To comply with any applicable federal, state or local laws, rules, regulations or ordinances.

(b) A licensee has no duty to conduct an independent inspection of the property for the benefit of the buyer and has no duty to independently verify the accuracy or completeness of statements made by the seller or independent inspectors.

(c) A licensee has no duty to conduct an independent investigation of the buyer's financial condition or to

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verify the accuracy of completeness of any statement made by the buyer.

(d) A licensee may do the following without breaching any obligation or responsibility:

(i) Show alternative properties not owned by the seller to a prospective buyer;

(ii) List competing properties for sale or lease;

(iii) Show properties in which the buyer is interested to other prospective buyers; and

(iv) Serve as an agent, subagent or intermediary for the same or for different parties in other real estate transactions.

33-28-311. Licensees working with landlords and tenants.

(a) For the purposes of this article, a licensee shall be deemed to be working with:

(i) The landlord as an agent or intermediary pursuant to a written agreement; and

(ii) The tenant who is a customer unless otherwise provided for in writing between the parties.

Section 2. W.S. 33-28-301(a)(iii), (iv), (vii), (viii) and by creating new paragraphs (ix) through (xiv), 33-28-302(a) through (c), (e) through (g) and by creating new subsections (h) through (q), 33-28-303(a)(intro), (iii)(A), (C), (D), (E), (G), (b)(intro) and (c),

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33-28-304(a)(intro), (iii)(A), (C) through (E), (G), (b)(intro) and (c), 33-28-305(a) and (b)(intro), 33-28-306(a)(intro), (i), (iv), by creating new paragraphs (vi) and (vii) and (b) through (d), 33-28-307(a)(intro) and (ii) and 33-28-308(c), (d) and (f) are amended to read:

33-28-301. Definitions.

(a) As used in this article:

(iii) "Buyer's agent" means a ~~broker~~licensee who is authorized to represent and act for the buyer in a real estate transaction;

(iv) "Intermediary" means a ~~broker~~licensee who assists one (1) or more parties throughout a contemplated real estate transaction with communication, ~~and contract terms, forms or~~ the closing of the real estate transaction without being an agent or advocate for any party to the transaction;

(vii) "Seller's agent" means a ~~broker~~licensee who is authorized to represent and act for the seller in a real estate transaction;

(viii) "Subagent" means a ~~broker~~licensee authorized to represent and act for ~~another~~a broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker;~~;~~

(ix) "Customer" means a party to a real estate transaction who has established no intermediary or agency relationship with any licensee in that transaction;

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(x) "Designated agent" means a licensee who is designated in writing by a responsible broker to serve as an agent or intermediary for a seller or buyer in a real estate transaction;

(xi) "In-house real estate transaction" means a real estate transaction wherein the buyer and seller are both represented by, or working with, licensees working in the same real estate firm;

(xii) "Licensee" means an individual licensed pursuant to W.S. 33-28-102(a)(ix);

(xiii) "Responsible broker" means an individual who has a broker's license and who has been designated as the broker who is responsible for the supervision of the activities of licensees associated with the brokerage firm or a broker who operates a single license office;

(xiv) "Transaction manager" means a licensee designated in writing by the responsible broker to supervise a transaction. The transaction manager shall not be an agent in the transaction and shall have the duties of an intermediary while supervising the transaction.

33-28-302. Relationships between licensees and the public.

(a) A broker shall not be required to offer or engage in any more than one (1) or in all of the brokerage relationships. When engaged in any of the activities enumerated in this article W.S. 33-28-102(a)(iii), a licensee may act in any real estate transaction as an agent or intermediary or may work with the seller or buyer as a customer. The licensee's duties and obligations arising

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from that relationship shall be disclosed to the seller or buyer pursuant to this article.

(b) When engaged in any of the activities enumerated in W.S. 33-28-102(a)(iii), a ~~broker~~-licensee may act as an agent only pursuant to a written agreement with the seller or buyer which discloses the duties and responsibilities set forth in W.S. 33-28-303 or 33-28-304.

(c) When engaged in any of the activities enumerated in W.S. 33-28-102(a)(iii), a ~~broker~~-licensee may act as a subagent with the duties and responsibilities set forth in W.S. 33-28-303(g), only pursuant to a written agreement between the seller and the seller's agent authorizing an offer of subagency to other brokers, or as an intermediary with the seller or buyer, which written agreement discloses the duties and responsibilities set forth in W.S. 33-28-305.

(e) A ~~broker~~-licensee may work with a single party in separate transactions pursuant to different relationships, including selling one (1) property as a seller's agent and working with that seller in buying another property as an intermediary, or buyer's agent or subagent, if the ~~broker licensee~~ complies with this article in establishing the relationships ~~a separate relationship in writing~~ for each transaction.

(f) A ~~broker, associate broker or salesman, licensed pursuant to article 1 of this chapter,~~ licensee may complete ~~standard~~-real estate forms and shall explain to the parties the effects thereof, if the ~~broker, associate broker or salesman licensee~~ is performing the activities enumerated or referred to in W.S. 33-28-102(a)(iii) in the transaction in which the forms are to be used.

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(g) Every contract, duty or relationship within this article, including intermediary or customer relationships, imposes an obligation of good faith and fair dealing in its performance or enforcement.

(h) If a real estate brokerage firm has more than one (1) licensee, the responsible broker and any licensee associated with or engaged by that responsible broker may be designated to work with the seller or the buyer as a designated agent. For an in-house real estate transaction, the designated agent shall be:

(i) A broker;

(ii) An associate broker; or

(iii) A salesman under the direct supervision of a broker, and the broker is not:

(A) A party to the real estate transaction;

or

(B) A transaction manager.

(j) Licensees employed or engaged by the same responsible broker may be designated agents for different buyers or sellers in the same transaction. If the responsible broker is representing a buyer or a seller in an in-house transaction, the responsible broker shall immediately appoint a transaction manager. The simultaneous designations shall not constitute dual agency or require the responsible broker or licensee to act as an intermediary unless otherwise required by this article. A responsible broker or transaction manager shall have access to all necessary information but shall be prohibited from sharing any confidential information of any party to the

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transaction that the broker or manager may learn in the process of supervising the licensees or the transaction.

(k) A licensee may work as an agent for the seller treating the buyer as a customer or as an agent for the buyer treating the seller as a customer but not as an agent for both the seller and the buyer. A licensee may be designated to work as an intermediary for both the seller and the buyer in the same transaction. The applicable designated relationship shall be disclosed in writing to the seller and buyer at the earliest reasonable opportunity. A designated agent is not precluded from working with a buyer or seller in a real estate transaction solely because the agent was precluded from representing that person in an earlier separate real estate transaction.

(m) No seller or buyer shall be vicariously liable for an agent's acts or omissions that have not been approved, directed or ratified by the seller or buyer.

(n) Nothing in this section shall be construed to limit the responsible broker's responsibility to supervise licensees associated with the broker or firm or to shield the broker from vicarious liability.

(o) A licensee shall not establish dual agency with any seller or buyer.

(p) A customer relationship shall exist between a licensee and any party to a real estate transaction unless a single agency or intermediary relationship is established through a written agreement between the licensee and the party or parties. When a buyer or seller is represented by another licensee, a licensee may work with the other buyer or seller as a customer, having no written agreement, agency or intermediary relationship with either party. A

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licensee shall not owe any duty of confidentiality to a customer.

(g) Proprietary ownership interest of listings shall be vested in the responsible broker.

33-28-303. Seller's agent engaged by seller.

(a) A ~~broker~~-licensee engaged by a seller to act as a seller's agent has the following duties and obligations:

(iii) To promote the interests of the seller with the utmost good faith, loyalty and fidelity, including:

(A) To seek a price and terms which are acceptable to the seller, except that the ~~broker~~-licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale;

(C) To disclose to the seller adverse material facts actually known by the ~~broker~~-licensee;

(D) To counsel the seller as to any material benefits or risks of a transaction which are actually known by the ~~broker~~-licensee;

(E) To advise the seller to obtain expert advice as to material matters about which the ~~broker~~-licensee knows but the specifics of which are beyond the expertise of the ~~broker~~-licensee;

(G) To ~~disclose to~~ inform the seller that ~~because the broker or authorized subagent is acting as an agent for the seller,~~ the seller may be vicariously liable

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for the acts of the ~~broker and authorized subagent while acting within the scope of the agency relationship~~ seller's agent or seller's subagent that are approved, directed or ratified by the seller.

(b) The following information shall not be disclosed by a ~~broker~~-licensee acting as a seller's agent without the informed consent of the seller:

(c) A ~~broker~~-licensee acting as a seller's agent owes no duty or obligation to the buyer, except that a ~~broker licensee~~ shall disclose to any prospective buyer all adverse material facts actually known by the ~~broker licensee~~. The adverse material facts may include adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property and any environmental hazards affecting the property which are required by law to be disclosed. The ~~broker~~-licensee acting as a seller's agent shall not perpetuate a material misrepresentation of the seller which the ~~broker~~-licensee knows or should know is false.

33-28-304. Agent engaged by buyer.

(a) A ~~broker~~-licensee engaged by a buyer to act as a buyer's agent shall have the following duties and obligations:

(iii) To promote the interests of the buyer with the utmost good faith, loyalty and fidelity, including:

(A) To seek a price and terms which are acceptable to the buyer, except that the ~~broker~~-licensee shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property;

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(C) To disclose to the buyer adverse material facts actually known by the ~~broker~~licensee;

(D) To counsel the buyer as to any material benefits or risks of a transaction which are actually known by the ~~broker~~licensee;

(E) To advise the buyer to obtain expert advice as to material matters about which the ~~broker~~licensee knows but the specifics of which are beyond the expertise of the ~~broker~~licensee;

(G) To ~~disclose to~~inform the buyer that ~~because the broker is acting as the agent for the buyer,~~ the buyer may be vicariously liable for the acts of the ~~broker while he is acting within the scope of the agency relationship~~buyer's agent that are approved, directed or ratified by the buyer.

(b) The following information shall not be disclosed by a ~~broker~~licensee acting as a buyer's agent without the informed consent of the buyer:

(c) A ~~broker~~licensee acting as a buyer's agent owes no duty or obligation to the seller, except that a ~~broker~~licensee acting as a buyer's agent shall not make any material misrepresentation or fraudulent misrepresentation regarding an adverse material fact actually known by the ~~broker~~licensee.

33-28-305. Intermediary.

(a) A ~~broker~~licensee engaged as an intermediary shall not act as an advocate or agent for either party and shall be limited to providing those services described in subsection (b)(ii) of this section.

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(b) A ~~broker~~licensee engaged as an intermediary shall owe to each party with whom the intermediary has contracted the following duties and obligations:

33-28-306. Relationship disclosures.

(a) For purposes of this section, open house showings, preliminary conversations and requests for factual information do not constitute discussions or arrangements incidental to a sale, purchase, exchange or lease. Prior to engaging in any discussion or arrangement incidental to a sale, purchase, exchange or lease option, and prior to entering into any written agreement, with a buyer or seller, a ~~broker~~licensee shall make a written disclosure of applicable brokerage agency, intermediary or customer relationships which ~~must~~shall contain at a minimum the following:

(i) A description of all the different brokerage agency, intermediary and customer relationships allowed by this article and a statement that the commission for different relationships is negotiable;

(iv) A statement that any established relationship cannot be modified without the written consent of the buyer or seller and that the buyer or seller may, but is not required to, negotiate different commission fees as a condition of consenting to a change in relationship;
and

(vi) A statement that the seller or buyer may be vicariously liable for acts of the agent, subagent or intermediary if the seller or buyer approves, directs or ratifies the acts; and

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(vii) A statement that a customer shall not be afforded any confidentiality in any communication to or with the licensee.

(b) The written disclosure shall contain a signature line for the buyer or seller to acknowledge receipt of the disclosure. The disclosure and acknowledgment, by itself, shall not constitute a contract or agreement with the ~~broker-licensee~~. Until the buyer or seller executes such acknowledgment, no representation agreement shall be executed or valid.

(c) A ~~broker-licensee~~ who has established an agency relationship, a subagency relationship or an intermediary relationship with a seller or buyer shall provide notice of that relationship to any other party to the transaction at the earliest reasonable opportunity.

(d) Disclosures made in accordance with this article shall be sufficient to disclose ~~brokerage—agency, intermediary and customer~~ relationships to the parties to the transaction and to the public.

33-28-307. Change from agent to intermediary.

(a) ~~A broker—~~For in-house transactions, a licensee acting as an agent to a buyer or seller with respect to a particular real estate transaction may instead act as an intermediary to ~~that party only in instances—~~the parties when:

(ii) Both parties execute a written consent, ~~which contains—~~at the earliest reasonable opportunity after the events creating the potential conflict in agency relationships develops. The written consent shall contain a conspicuous statement of the duties and obligations that

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would no longer be owed to the parties if the ~~broker~~
licensee becomes an intermediary and not an agent.

33-28-308. Compensation.

(c) A seller may agree that an intermediary, buyer's agent, ~~or~~ subagent or a licensee working with a buyer as a customer may share in the commission or other compensation paid by the seller with another broker.

(d) A buyer may agree that a seller's agent, intermediary, ~~or~~ subagent or a licensee working with a seller as a customer may share in the commission or other compensation paid by the buyer with another broker.

(f) Prior to entering into a written agreement with the seller and buyer, or prior to entering into a contract to buy or sell, the broker shall disclose in writing to the seller and buyer to the transaction, the ~~brokerage relationship~~ agency, intermediary or customer relationships of all parties, persons and entities paying compensation or commissions to the broker.

Section 3. W.S. 33-28-302(d) and 33-28-307(a)(i) are repealed.

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Section 4. This act is effective July 1, 2009.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk