
LICENSING LAW

Question: How long should a salesperson keep closed sale files?

Answer: The real estate licensing law requires brokers and salespersons to maintain their records for three years, but I recommend at least six years, because (1) the statute of limitations on actions arising out of a written contract is six years and (2) the three-year statute of limitations on negligence and fraud claims does not begin to run until the aggrieved party discovers or should have discovered all elements of their claim.

Question: Can a real estate licensee be paid directly by a lender for broker price opinions used for refinancing purposes and not in conjunction with a listing or sale?

Answer:

RCW 18.140.020 (1) provides that "compensation may be provided for brokers price opinions prepared by a real estate licensee, licensed under chapter 18.85 RCW."

RCW 18.140.020(5) further provides that "This chapter does not preclude an individual person licensed by the state of Washington as a real estate broker or as a real estate salesperson from issuing a brokers price opinion. However, if the brokers price opinion is written, or given as evidence in any legal proceeding, and is issued to a person who is not a prospective seller, buyer, lessor, or lessee as the only intended user, then the brokers price opinion shall contain a statement, in an obvious location within the written document or specifically and affirmatively in spoken testimony, that substantially states: "This brokers price opinion is not an appraisal as defined in chapter 18.140 RCW and has been prepared by a real estate licensee, licensed under chapter 18.85 RCW, who (is/is not) also state certified or state licensed as a real estate appraiser under chapter 18.140 RCW." However, the brokers price opinion issued under this subsection may not be used as an appraisal in conjunction with a federally related transaction."

Therefore, an agent may prepare a BPO and be paid for it, so long the BPO contains the above-quoted statement. However, since preparing a BPO is a real estate brokerage service, the compensation must be paid through the broker and is subject to commission schedules and splits.

Question: I recently hired an agent from another company who currently has a listing shared with another agent from the other company. They would like to continue sharing the listing. Is this possible?

Answer: We can co-list property with another broker, in which case both listing agents and brokers represent the sellers. Include both brokers and indicate the commission split (e.g., 50/50) on the listing agreement.

Question: Can an Oregon agent list property located in Washington, if they do not come into Washington? Could they advertise in Washington?

Answer: An out-of-state licensee can list and sell property in Washington, so long as the licensee performs no services in Washington for which a real estate license is required. An out-of-state licensee cannot advertise or otherwise solicit buyers in Washington.

Question: We have been approached by an owner of company who is transferring incoming employees. He wants our agents to contribute 1% of their commissions towards buyers' closing costs. Can we do that as part of the escrow instructions -- or do we need to reduce our commission by 1% to the seller and have the seller contribute the 1% to the buyers' closing costs?

Answer: It is not considered an unlawful sharing of commissions to rebate a portion of the commission to a party to the transaction. Therefore, we can instruct the closing agent to apply 1% of our commission

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directly to the buyers' allowable costs at closing. The buyers are required to disclose the rebate to the lender. We are required to disclose the rebate to the sellers only if we represent the sellers.

Question: I have an agent who would like her business cards to include the branch address, but would like to exclude the *name* of the branch office, simply because she does business all over town and some customers feel the branch is too far away. Is she allowed to exclude that from the card or is it a legal requirement?

Answer: There is no licensing law or other legal requirement that business cards include identification of the branch office, address or telephone number at all. The only licensing law requirement is to include the name of the broker as licensed. Any other requirements are a matter of Company Policy.

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