

**Washington REALTORS®  
2023 Legislation on Real Estate Agency Law**

**Background:** Chapter 18.86 RCW is Washington’s real estate agency law, which governs various legal requirements for brokers and firms providing real estate brokerage services. This law has not been revised for more than 25 years, and should be updated to reflect consumer expectations and industry practices. Washington REALTORS® is developing legislation that would amend the agency law to increase transparency and improve consumer understanding of real estate brokerage practices, as follows:

**1. Require Buyer Agency Agreements:** Under current law, the owner (seller) of real estate must enter into a written agreement with the seller’s broker. However, there is no statutory requirement that a prospective buyer sign a written agreement with the buyer’s broker to create an agency relationship. The law would be amended to require written buyer agency agreements.

**2. Identify Minimum Contents of Buyer Agency Agreement:** The agency law would establish required minimum contents of a buyer agency agreement. These would include provisions including the duration of the agreement, how termination of the agreement occurs, terms of compensation, and whether the agreement is exclusive or non-exclusive. A buyer agency agreement could include additional terms not required by statute, but must at least include the minimum statutory requirements.

**3. Informed Consent for Dual Agency:** In some transactions, a real estate broker can represent both the buyer and the seller of real estate (“dual agency”). While somewhat uncommon, dual agency can be beneficial for consumers in certain transactions. However, dual agency has inherent limitations and places restrictions on the services that a broker can provide. Accordingly, the agency law would require a consumer to separately agree to dual agency and acknowledge that the broker may not advocate terms favorable to one party to the detriment of the other.

**4. Revise and Reformat State Agency Law Pamphlet:** The current agency law governs the content of the state agency law pamphlet, intended to explain the agency law to consumers. However, under current law the pamphlet is mainly a verbatim restatement of statutes, and does not provide consumers with information in a format that is easy to understand. The agency law pamphlet would be revised and reformatted so it is understandable to consumers.

**5. Clarify That Broker Legal Duties Apply to All Parties:** The Court of Appeals issued an opinion in *Falcon Properties v. Bowfits* that the statutory duties of real estate brokers in RCW 18.86.030 apply only to the broker’s client, not to other parties in a transaction. This decision is contrary to the historical interpretation of the statute and is harmful to consumers. For example, one of the statutory duties brokers is “to deal honestly and in good faith.” The *Falcon v. Bowfits* decision (erroneously) allows a broker representing a seller to be dishonest as to the broker representing the buyer, or to the buyer. The legislation would clarify that agency law duties apply not only to a broker’s own client, but with all parties in the transaction.