

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Designated real estate agents.

Sponsored by: Joint Minerals, Business and Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to real estate brokers and salesmen;
2 providing definitions; providing consumers with the ability
3 to engage real estate brokers on specified terms; providing
4 disclosure requirements relating to the general duties,
5 obligations and responsibilities of the real estate broker
6 engaged by the public; partially eliminating vicarious
7 liability; abolishing dual agents; specifying requirements
8 for real estate licensees; and providing for an effective
9 date.

10

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

12

13 **Section 1.** W.S. 33-28-301(a)(iv) and by creating new
14 paragraphs (ix) through (xii), 33-28-302(a) through (c),

(e) and (f) and by creating new subsections (h) through (q), 33-28-303(a)(intro), (iii)(A), (C) through (E), (G), (b)(intro) and (c), 33-28-304(a)(intro), (iii)(A), (C) through (E), (G), (b)(intro) and (c), 33-28-305(a), (b)(intro), (f)(iv) and (g), 33-28-306(a)(intro), (i), by creating a new paragraph (vi) and (b) through (d), 33-28-307(a)(intro) and 33-28-308(c), (d) and (f) are amended to read:

33-28-301. Definitions.

(a) As used in this article:

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

(ix) "Customer" means a party to a real estate transaction who does not have an agency or intermediary relationship with a licensee;

1 (x) "Designated agent" means a licensee who is
2 designated in writing by a broker to serve as an agent or
3 intermediary for a seller, landlord, buyer or tenant in a
4 real estate transaction. The designated agent shall be:

5
6 (A) A broker;

7
8 (B) An associate broker; or

9
10 (C) A salesman under the direct supervision
11 of the broker or an associate broker, neither of whom is an
12 agent in the real estate transaction.

13
14 (xi) "In-house real estate transaction" means a
15 real estate transaction wherein the buyer and the seller or
16 the landlord and the tenant are both represented by
17 licensees as agents or intermediaries within the same real
18 estate firm;

19
20 (xii) "Licensee" means an individual licensed
21 under W.S. 33-28-102(a)(ix).

22
23 **33-28-302. Relationships between licensees and the**
24 **public.**

1

2 (a) ~~A broker shall not be required to offer or engage~~
3 ~~in any one (1) or in all of the brokerage relationships~~
4 When engaged in any of the activities enumerated in ~~this~~
5 ~~article~~ W.S. 33-28-102(a)(iii) a licensee may act in any
6 real estate transaction as an agent or intermediary. The
7 licensee's general duties and obligations arising from that
8 relationship shall be disclosed to the seller and the buyer
9 or to the landlord and the tenant pursuant to this article.

10

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

16

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

1

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

10

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

18

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

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2

(i) A broker;

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4

(ii) An associate broker; or

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(iii) A salesman under the direct supervision of
a broker or an associate broker, neither of which is an
agent in the real estate transaction.

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(k) A licensee may work as an agent for the seller or
a landlord treating the buyer or tenant as a customer or as
an agent for the buyer or tenant treating the seller or
landlord as a customer but not as an agent for both the
seller and the buyer or both the landlord and the tenant.

1 A licensee may be designated to work as an intermediary for
2 both the seller and the buyer or both the landlord and the
3 tenant in the same transaction. The applicable designated
4 relationship shall be disclosed in writing to the seller
5 and buyer or landlord and tenant at the earliest reasonable
6 opportunity. A designated agent is not precluded from
7 working with a buyer, seller, landlord or tenant in a real
8 estate transaction solely because the agent was precluded
9 from representing that person in an earlier separate real
10 estate transaction.

11

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

16

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

21

22 (o) A licensee shall not establish dual agency with
23 any seller, landlord, buyer or tenant.

24

1 (p) A licensee shall not establish a subagency with
2 any other licensee.

3
4 (q) A customer relationship shall be deemed to exist
5 between a licensee and any party to a real estate
6 transaction. A licensee shall not owe any agency or
7 intermediary fiduciary duty to a customer in a customer
8 relationship.

9
10 **33-28-303. Seller's agent engaged by seller.**

11
12 (a) A ~~broker~~-licensee engaged by a seller to act as a
13 seller's agent has the following duties and obligations:

14
15 (iii) To promote the interests of the seller
16 with the utmost good faith, loyalty and fidelity,
17 including:

18
19 (A) To seek a price and terms which are
20 acceptable to the seller, except that the ~~broker~~-licensee
21 shall not be obligated to seek additional offers to
22 purchase the property while the property is subject to a
23 contract for sale;

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

3

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

7

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

12

13 (G) ~~To disclose to~~Informing the seller
14 that ~~because the broker or authorized subagent is acting as~~
15 ~~an agent for the seller,~~ the seller may be vicariously
16 liable for the acts of the ~~broker and authorized subagent~~
17 ~~while acting within the scope of the agency relationship~~
18 seller's agent that are approved or ratified by the seller.

19

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

23

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

13

14 **33-28-304. Agent engaged by buyer.**

15

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

19

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

22

23 (A) To seek a price and terms which are
24 acceptable to the buyer, except that the ~~broker~~licensee

1 shall not be obligated to seek other properties while the
2 buyer is a party to a contract to purchase property;

3

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

6

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

10

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

15

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

22

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

4
5 (c) A ~~broker~~licensee acting as a buyer's agent owes
6 no duty or obligation to the seller, except that a ~~broker~~
7 licensee acting as a buyer's agent shall not make any
8 material misrepresentation or fraudulent misrepresentation
9 regarding an adverse material fact actually known by the
10 ~~broker~~licensee.

11
12 **33-28-305. Intermediary.**

13
14 (a) A ~~broker~~licensee engaged as an intermediary
15 shall not act as an advocate or agent for either party and
16 shall be limited to providing those services described in
17 subsection (b)(ii) of this section.

18
19 (b) A ~~broker~~licensee engaged as an intermediary
20 shall owe to each party with whom the intermediary has
21 contracted the following duties and obligations:

22
23 (f) An intermediary may do the following without
24 breaching any obligation or responsibility:

1

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

5

6 (g) An intermediary may cooperate with other brokers.
7 ~~but shall not engage any subagents.~~

8

9 **33-28-306. Agency disclosures.**

10

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

22

23 (i) A description of all the different ~~brokerage~~
24 agency and intermediary relationships allowed by this

1 article and a statement that the commission for different
2 relationships is negotiable;

3
4 (vi) A statement that the seller or buyer may be
5 vicariously liable for acts of the agent or intermediary if
6 the seller or buyer approves, directs or ratifies the acts.

7
8 (b) The written disclosure shall contain a signature
9 line for the buyer or seller to acknowledge receipt of the
10 disclosure. The disclosure and acknowledgment, by itself,
11 shall not constitute a contract or agreement with the
12 ~~broker~~licensee. Until the buyer or seller executes such
13 acknowledgment, no representation agreement shall be
14 executed or valid.

15
16 (c) A ~~broker~~licensee who has established an agency
17 relationship,~~a subagency relationship~~ or an intermediary
18 relationship with a seller or buyer shall provide notice of
19 that relationship to any other party to the transaction at
20 the earliest reasonable opportunity.

21
22 (d) Disclosures made in accordance with this article
23 shall be sufficient to disclose ~~brokerage~~agency and

1 intermediary relationships to the parties to the
2 transaction and to the public.

3
4 **33-28-307. Change from agent to intermediary.**

5
6 (a) ~~A broker~~ For in-house transactions a licensee
7 acting as an agent to a buyer or seller with respect to a
8 particular real estate transaction may instead act as an
9 intermediary ~~to that party only in instances when:~~
10 following the written disclosure to the parties containing
11 a conspicuous statement of the modifications in duties and
12 obligations when the licensee changes from an agent to an
13 intermediary and upon the execution of a written consent by
14 the parties acknowledging and accepting the changes in
15 duties and obligations upon the change in the licensee from
16 an agent to an intermediary.

17
18 **33-28-308. Compensation.**

19
20 (c) A seller may agree that an intermediary, ~~or~~ or
21 buyer's agent ~~or subagent~~ may share in the commission or
22 other compensation paid by the seller. ~~with another broker.~~

(d) A buyer may agree that a seller's agent, or intermediary ~~or subagent~~ 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 or intermediary relationships of all parties, persons and entities paying compensation or commissions to the broker.

13 **Section 2.** W.S. 33-28-301(a)(vii) and (viii),
14 33-28-302(d), 33-28-303(f) and (g) and 33-28-307(a)(i) and
15 (ii) are repealed.

17 **Section 3.** This act is effective July 1, 2008.

19 (END)