

SENATE FILE NO. SF0110

Designated real estate agents.

Sponsored by: Senator(s) Bebout, Coe and Larson and
Representative(s) Brown, Gingery and Miller

A BILL

for

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

9

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

11

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

14

15 **33-28-310. Licensees working with buyers and sellers**
16 **as customers; duties; exceptions.**

1

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

5

6 (i) To exercise reasonable skill and care
7 including:

8

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

12

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

17

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

20

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

23

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

4
5 (F) Disclosing to all prospective buyers
6 any adverse material facts actually known by the licensee,
7 including but not limited to adverse material facts
8 pertaining to the title, the physical condition of the
9 property, any defects in the property and any environmental
10 hazards affecting the property required by law to be
11 disclosed;

12
13 (G) Disclosing to any prospective seller
14 all adverse material facts actually known by the licensee,
15 including but not limited to adverse material facts
16 pertaining to the buyer's financial ability to perform the
17 terms of the transaction and the buyer's intent to occupy
18 the property as a principal residence.

19
20 (ii) To comply with all requirements of this
21 article;

22
23 (iii) To comply with any applicable federal,
24 state or local laws, rules, regulations or ordinances.

1

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

7

8 (c) A licensee has no duty to conduct an independent
9 investigation of the buyer's financial condition or to
10 verify the accuracy of completeness of any statement made
11 by the buyer.

12

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

15

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

18

19 (ii) List competing properties for sale or
20 lease;

21

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

24

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

4
5 **33-28-311. Licensees working with landlords and**
6 **tenants.**

7
8 (a) For the purposes of this article, a licensee
9 shall be deemed to be working with:

10
11 (i) The landlord as an agent or intermediary
12 pursuant to a written agreement; and

13
14 (ii) The tenant who is a customer unless
15 otherwise provided for in writing between the parties.

16
17 **Section 2.** W.S. 33-28-301(a)(iv), (vii), (viii) and
18 by creating new paragraphs (ix) through (xiv), 33-28-302(a)
19 through (c), (e) through (g) and by creating new
20 subsections (h) through (q), 33-28-303(a)(intro), (iii)(A),
21 (C), (D), (E), (G), (b)(intro) and (c),
22 33-28-304(a)(intro), (iii)(A), (C) through (E), (G),
23 (b)(intro) and (c), 33-28-305(a) and (b)(intro),
24 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:

(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~~;~~.

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

4
5 (x) "Designated agent" means a licensee who is
6 designated in writing by a responsible broker to serve as
7 an agent or intermediary for a seller or buyer in a real
8 estate transaction;

9
10 (xi) "In-house real estate transaction" means a
11 real estate transaction wherein the buyer and seller are
12 both represented by, or working with, licensees working in
13 the same real estate firm;

14
15 (xii) "Licensee" means an individual licensed
16 pursuant to W.S. 33-28-102(a)(ix);

17
18 (xiii) "Responsible broker" means an individual
19 who has a broker's license and who has been designated as
20 the broker who is responsible for the supervision of the
21 activities of licensees associated with the brokerage firm
22 or a broker who operates a single license office;

23

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

6
7 **33-28-302. Relationships between brokers and the**
8 **public.**

9
10 (a) A broker shall not be required to offer or engage
11 in ~~any~~ more than one (1) ~~or in all~~ of the brokerage
12 relationships. When engaged in any of the activities
13 enumerated in ~~this article~~ W.S. 33-28-102(a)(iii), a
14 licensee may act in any real estate transaction as an agent
15 or intermediary or may work with the seller or buyer as a
16 customer. The licensee's duties and obligations arising
17 from that relationship shall be disclosed to the seller or
18 buyer pursuant to this article.

19
20 (b) When engaged in any of the activities enumerated
21 in W.S. 33-28-102(a)(iii), a ~~broker~~ licensee may act as an
22 agent only pursuant to a written agreement with the seller
23 or buyer which discloses the duties and responsibilities
24 set forth in W.S. 33-28-303 or 33-28-304.

1

2 (c) When engaged in any of the activities enumerated
3 in W.S. 33-28-102(a)(iii), a ~~broker~~licensee may act as a
4 subagent with the duties and responsibilities set forth in
5 W.S. 33-28-303(g), only pursuant to a written agreement
6 between the seller and the seller's agent authorizing an
7 offer of subagency to other brokers, or as an intermediary
8 with the seller or buyer, which written agreement discloses
9 the duties and responsibilities set forth in W.S.
10 33-28-305.

11

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

20

21 (f) A ~~broker, associate broker or salesman, licensed~~
22 ~~pursuant to article 1 of this chapter,~~ licensee may
23 complete ~~standard~~ real estate forms and shall explain to
24 the parties the effects thereof, ~~if the broker, associate~~

1 ~~broker or salesman~~ licensee is performing the activities
2 enumerated or referred to in W.S. 33-28-102(a)(iii) in the
3 transaction in which the forms are to be used.

4

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

9

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

16

17 (i) A broker;

18

19 (ii) An associate broker; or

20

21 (iii) A salesman under the direct supervision of
22 a broker who is not:

23

1 (A) A party to the real estate transaction;
2 or

3

4 (B) A transaction manager.

5

6 (j) The agency relationship established between the
7 seller or buyer and a designated agent shall not extend to
8 the responsible broker nor to any other licensee employed
9 or engaged by that responsible broker who has not been so
10 designated and shall not extend to the firm, partnership,
11 limited liability company, association, corporation or
12 other entity that employs such licensee. A responsible
13 broker or transaction manager shall have access to all
14 necessary information but shall be prohibited from sharing
15 any confidential information of any party to the
16 transaction that he may learn in the process of supervising
17 the transaction.

18

19 (k) A licensee may work as an agent for the seller
20 treating the buyer as a customer or as an agent for the
21 buyer treating the seller as a customer but not as an agent
22 for both the seller and the buyer. A licensee may be
23 designated to work as an intermediary for both the seller
24 and the buyer in the same transaction. The applicable

1 designated relationship shall be disclosed in writing to
2 the seller and buyer at the earliest reasonable
3 opportunity. A designated agent is not precluded from
4 working with a buyer or seller in a real estate transaction
5 solely because the agent was precluded from representing
6 that person in an earlier separate real estate transaction.

7
8 (m) No seller or buyer shall be vicariously liable
9 for an agent's acts or omissions that have not been
10 approved, directed or ratified by the seller or buyer.

11
12 (n) Nothing in this section shall be construed to
13 limit the responsible broker's responsibility to supervise
14 licensees associated with the broker or firm or to shield
15 the broker from vicarious liability.

16
17 (o) A licensee shall not establish dual agency with
18 any seller or buyer.

19
20 (p) A customer relationship shall exist between a
21 licensee and any party to a real estate transaction unless
22 a single agency or intermediary relationship is established
23 through a written agreement between the licensee and the
24 party or parties. When a buyer or seller is represented by

1 another licensee, a licensee may work with the other buyer
2 or seller as a customer, having no written agreement,
3 agency or intermediary relationship with either party. A
4 licensee shall not owe any duty of confidentiality to a
5 customer.

6
7 (q) Proprietary ownership interest of listings shall
8 be vested in the responsible broker.

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~~inform the seller that
14 ~~because the broker or authorized subagent is acting as an~~
15 ~~agent for the seller,~~ the seller may be vicariously liable
16 for the acts of the ~~broker and authorized subagent while~~
17 ~~acting within the scope of the agency relationship~~seller's
18 agent or seller's subagent that are approved, directed or
19 ratified by the seller.

20

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

24

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~~
13 licensee knows but the specifics of which are beyond the
14 expertise of the ~~broker~~licensee;

15

16 (G) To ~~disclose to~~inform 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 **33-28-306. Relationship disclosures.**

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

12
13 (i) A description of all the different ~~brokerage~~
14 agency, intermediary and customer relationships allowed by
15 this article and a statement that the commission for
16 different relationships is negotiable;

17
18 (iv) A statement that any established
19 relationship cannot be modified without the written consent
20 of the buyer or seller and that the buyer or seller may,
21 but is not required to, negotiate different commission fees
22 as a condition of consenting to a change in relationship;
23 ~~and~~

24

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

5
6 (vii) A statement that a customer shall not be
7 afforded any confidentiality in any communication to or
8 with the licensee.

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

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

23

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

5
6 **33-28-307. Change from agent to intermediary.**

7
8 (a) ~~A broker~~For in-house transactions, a licensee
9 acting as an agent to a buyer or seller with respect to a
10 particular real estate transaction may instead act as an
11 intermediary to ~~that party only in instances~~the parties
12 when:

13
14 (ii) Both parties execute a written consent,
15 ~~which contains~~at the earliest reasonable opportunity after
16 the events creating the potential conflict in agency
17 relationships develops. The written consent shall contain
18 a conspicuous statement of the duties and obligations that
19 would no longer be owed to the parties if the ~~broker~~
20 licensee becomes an intermediary and not an agent.

21
22 **33-28-308. Compensation.**

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

5
6 (d) A buyer may agree that a seller's agent,
7 intermediary, ~~or subagent~~ or a licensee working with a
8 seller as a customer may share in the commission or other
9 compensation paid by the buyer with another broker.

10
11 (f) Prior to entering into a written agreement with
12 the seller and buyer, or prior to entering into a contract
13 to buy or sell, the broker shall disclose in writing to the
14 seller and buyer to the transaction, the ~~brokerage~~
15 ~~relationship~~ agency, intermediary or customer relationships
16 of all parties, persons and entities paying compensation or
17 commissions to the broker.

18
19 **Section 3.** W.S. 33-28-302(d) and 33-28-307(a)(i) are
20 repealed.

21
22 **Section 4.** This act is effective July 1, 2009.

23
24 (END)