

**Current Issues in Washington
Residential Real Estate**

By Sabrina Jones-Schroeder, J.D.

This is a three-hour course focusing on complex forms and forms provisions, the VA loan program, legislative updates, business practices updates and professionals standards.

This class will fulfill the Washington Department of Licensing mandatory core curriculum for 2020-21.

Course #C0027CORE2021

About the Author/Instructor

Sabrina Jones-Schroeder, J.D.

Sabrina is the Designated Broker and owner of EXIT Real Estate Professionals in Spokane, Washington, providing real estate services to the greater Spokane area.

As the Designated Broker, Sabrina created a 16 course training program for new brokers covering the many aspects of a real estate career. Sabrina has taught for the Spokane and Washington Associations of REALTORS® since 1997.

Sabrina graduated Magna Cum Laude from Gonzaga University in 1992 with Bachelor of Arts Degrees in Political Science and Spanish and a concentration in Women's Studies (during which time she began her real estate career). She graduated Cum Laude from Gonzaga University School of Law in 1995 and was admitted to the Washington Bar Association having passed the Washington bar exam in 1995.

Even after 30 years in the industry, Sabrina still has enthusiasm and passion for all aspects of her real estate career. She started in the business in 1990 (with a three-year sabbatical to attend law school) and has spent time as an active listing and selling broker, as well as in sales associate recruiting, retention, management and training.

Sabrina is married to Jeff who owns a home inspection company in Spokane and they have two wonderful children – Emerson and Cole. They love to snow ski, mountain bike, hike, travel, go “glamping” in their fifth wheel named “Lola”, binge watch Netflix shows and just spend time together hanging out.

Sabrina is a knowledgeable and energetic (and often entertaining) speaker with a lot of valuable information and experience to share.

Curriculum and Learning Objectives

TOPIC AREA I: FORMS AND LOAN PROGRAMS (1.5 hours)

Identify and discuss the forms that are currently causing issues for licensees in the field, emphasizing purpose, standards of practice, and pitfalls, as well as specific loan program updates affecting the industry. Specifically, the learner will know and be able to effectively utilize the following forms in a residential real estate transaction where appropriate:

A. Escalation Addendum – Form 35E (15 minutes) – Students will learn:

1. The benefits and pitfalls of an escalation provision from the Buyer and Seller side including when it is appropriate to use an escalation addendum and when it may not be appropriate to use, as well as how to identify when the benefits outweigh the disadvantages in a transaction.
 - a. How to use this tool correctly.

B. Evidence of Funds – Form 22EF (5 minutes)

1. Students will gain competency in using an Evidence of Funds form on all transactions (unless the Buyer is required to provide no cash at closing).

C. Sales Involving Contingent Buyers – Understanding the Complexity of Buyer's Need to Sell a Home in Order to Purchase Seller's Property – Forms 22B & 22Q (20 minutes)

1. A contingency on selling and closing the sale of Buyer's property is complicated. Students will be provided a basic explanation of how this contingency works and the overall effectiveness of this contingency in the transaction.
2. Students will learn how to use the appropriate contingency addenda, risks associated with Buyer's waiver of the contingency, risks to the Seller if Buyer's earnest money is low, inconvenience to the Seller waiting for the contingent sale to close and the uncertainty of this kind of transaction.
3. Students will receive an explanation of the importance of the Seller seeing the pending PSA for the Buyer's pending sale contingency transaction (Form 22Q).

D. Inspection Addendum – Form 35 (20 minutes)

1. Students will understand the overall function and proper drafting of an inspection contingency.

E. Inspection Response – Form 35R (10 minutes)

1. Students will understand how to use the inspection response form to navigate the inspection contingency including Buyer's notice to the Seller, Seller's response to the Buyer's notice and the Buyer's reply to the Seller's response.

F. Closing and Possession Provisions (10 minutes)

1. Students will understand how to explain the differences between signing, closing and possession and best practices with regard to early and delayed possession.

- G. VA Loan Program (15 minutes) – Students will learn:**
1. The basics of the VA loan program.
 2. Updates the Veteran’s Administration has adopted with regard to the VA loan program especially with regard to what costs the veteran borrower can and cannot pay.
 3. How VA loan limits are established by area and understand where to find information to verify the loan limit for the areas they serve.

TOPIC AREA II: LEGISLATIVE UPDATE (.5 hours)

Upon completion of this unit, the learner will know, be able to identify and describe updates to:

- A. Washington Real Estate Excise Tax (REET) Legislation (ESSB 5998)**
1. The change in the excise tax rate from a flat fee to a tiered rate structure.
 2. What types of properties are exempt from this new rate structure.
 3. Change in the time period concerning controlling interest transfer or acquisition.
- B. Washington Business and Occupation (B&O) Tax Rates**
1. Students will learn about updates to the state B&O tax law with regard to an increase in the tax rate for certain service industries in the state.
- C. Clarification on Protected Classes under Federal and State Fair Housing laws –**
Students will review the following fair housing laws and protected classes:
1. Federal law against discrimination and resulting protected classes (<https://www.eeoc.gov/>)
 2. Washington state law against discrimination and resulting protected classes (<https://www.hum.wa.gov/hair-housing>)
- D. Washington Residential Landlord-Tenant Law Update from the 2019-20 Legislative Session –**
Students will learn about the following changes to the Landlord-Tenant Act:
1. Timely notice for rent increases (HB 1440)
 2. Timely notice for economic (failure to pay rent) evictions (SB 5600)
 3. Timely notice for building demolition, major rehabilitation or changes in the building use (HB 1462)

TOPIC AREA III: BUSINESS PRACTICES UPDATE AND PROFESSIONALS STANDARDS (1.0 hours)

Upon completion of this unit, the learner will know and be able to understanding the basics of best business practices and professional standards. Specifically, the learner will know, be able to identify and describe:

- A. Professional cooperation with fellow licensees, as well as the public**
- B. Managing Broker responsibilities with regard to managing a firm or branch office or as a team leader**
- C. Timely presentation of all written offers per RCW 18.86.030 (1)(c) – Students will understand:**
 - 1. What is meant by the requirement to “present” all written offers, written notices and other written communications.
 - 2. Definition of “timely manner”.
- D. Multiple Offer Scenarios– Students will understand:**
 - 1. How to evaluate offers based on a Buyer’s ability to close on terms acceptable to Seller.
 - 2. How to avoid evaluating offers based on discriminatory information or protected classes.
 - 3. Seller and Buyer options when facing multiple offer situations.
 - 4. Time is of the essence when presenting offers.
 - 5. Best practices in multiple offer situations.

TOPIC AREA I: FORMS AND LOAN PROGRAMS

Educational Objective 1: Forms and Loan Programs

A. Escalation Provision or Clause

What is an escalation provision or clause? What does it do? _____

1. Benefits and Pitfalls of Escalation Provisions:

What are the benefits for the Buyer? _____

What are the benefits for the Seller? _____

What are the pitfalls for the Buyer? _____

What are the pitfalls for the Seller? _____

When is it appropriate to use an escalation provision? _____

When would a buyer's broker NOT want to use an escalation provision? _____

How do you identify when the benefits outweigh the disadvantages of using an escalation provision in a transaction? _____

**a. Form 35E – Escalation Addendum to Purchase and Sale Agreement
(Appendices A & B) – How to use this tool correctly:**

Exercise: You have shown a property to your Buyer (we shall call him or her Buyer A) listed for \$275,000. Buyer A is willing (and able!) to pay up to \$325,000. Buyer A wants to offer full price with an escalation provision that he or she will beat any other offer by \$2,500 not to exceed the approval cap of \$325,000.

Step One: Fill in the blanks on **Form 35 – Escalation Addendum to PSA at Appendix A** as Buyer A's broker writing their escalation provision.

As the listing broker, you have received multiple offers on this property. Buyer A has offered full price (\$275,000) with an escalation of \$2,500 not to exceed \$325,000. Buyer B has offered \$270,000 with no escalation. Buyer C has offered \$300,000 with an escalation provision of \$1,500 not to exceed \$310,000. Buyer D has offered \$280,000 with an escalation of \$2,000 not to exceed \$330,000.

Step Two: Use the worksheet at the bottom of **Form 35E – Escalation Addendum to PSA at Appendix B** to work out the winning bid. Whose bid gave the highest net to the seller? _____

Notes:

1) Not every offer will trigger an escalation provision as "competing offer" is defined in Form 35E as one that is "a bona fide, arm's length written offer on NWMLS or similar forms containing all material terms necessary for an enforceable agreement including:

- a. full purchase price to be paid in cash at closing;
- b. provides for closing no later than _____ days (60 if not filled in) from date of

- this offer; and
- c. is not contingent on the sale of the buyer's property (e.g., NWMLS Form 22B or equivalent). A competing offer may include other conditions such as a buyer's pending sale of property contingency (i.e. NWMLS Form 22Q or equivalent)."

2) Seller must submit copy of competing offer including competing offer's Form 35E (if there is one if invoking the Buyer's escalation provision).

B. Form 22EF - Evidence of Funds (Appendix C)

What are the two uses for Form 22EF – Evidence of Funds Addendum to the PSA?

1. _____ Paragraph # _____

2. _____ Paragraph # _____

What would be considered evidence of non-contingent funds? _____

What happens if the Buyer does not give proof of non-contingent funds within the required timeline (3 days unless negotiated otherwise)? _____

What happens if the Buyer does not receive the contingent funds prior to closing? _____

C. Sales Involving Contingent Buyers – Understanding the Complexity of Buyer's Need to Sell a Home in Order to Purchase Seller's Property

**Form 22B – Buyer's Sale of Property Contingency Addendum to PSA (Appendix D) versus
Form 22Q – Buyer's Pending Sale of Property Contingency Addendum to PSA (Appendix E)**

What is the difference between the two? _____

1. Contingencies on selling and closing the sale of Buyer's property can be complicated as Buyers and Seller's interests are very different.

2. **Form 22B – Buyer’s Sale of Property Contingency Addendum to PSA (Appendix D) – how to use it and major provisions:**

Paragraph 1: Buyer must list their house on an MLS serving their area within the negotiated timeline (5 days if not filled in). Buyer and Seller will negotiate a contingency period (45 days if not filled in). Sell = Buyer’s property under contract.

Paragraph 2: Buyer must get Seller’s consent to an accept offer if the Buyer of the Buyer’s property needs to sell a property or the closing is outside of a 30-60 day period. What happens if the Buyer accepts an offer with one of these provisions? _____

Paragraph 3: Timeline for Buyer to apply for financing – tied either to mutual acceptance or the satisfaction of this contingency.

Paragraph 4: Continued marketing provision, also known as the bump clause. Parties will use **Form 44 - Bump Notice (Appendix F)** and **Form 46 – Bump Response (Appendix G)** to navigate this part of the contingency.

Paragraph 5: If Buyer satisfies the contingency, must give notice within 2 days, likely using **Form 90K – Contingency Property Notice (Appendix H)**, which must be accompanied by the PSA for the sale of the Buyer’s property.

Paragraph 6: Possibilities if the Buyer’s sale fails. Note waiver of this contingency is waiver of all other contingencies. This is very risky to the Buyer – loss of earnest money if Buyer fails to close for any reason. Also risky to the Seller if the Buyer waives and then is unable to close – the Seller will get the Buyer’s earnest money, sure, but is that sufficient compensation? Perhaps consider higher earnest money on a 22B contingency sale?

Paragraph 7: Closing date per this addendum will supersede the Closing Date in the PSA and will either be 3 days after the closing of the sale of the contingency property if the Buyer satisfies the contingency or 30 days after any waiver of the contingency. Ultimately a pitfall to a 22B transaction: the parties are unable to dial in closing date.

In multiple offer situation, obviously contingent offers should be weighed against non-contingent offers.

What might be Buyer alternatives to a 22B – Sale of Buyer’s Property Contingency offer?

1. _____

2. _____

3. _____

4. _____

3. Form 22Q – Buyer’s Pending Sale of Property Contingency Addendum to PSA (Appendix E)

- a. Buyer must include a full copy of all pages of their transaction so Seller may consider the terms of the Buyer’s pending sale.
- b. Buyer cannot extend the closing of the sale of their property if such extension would affect the closing of the sale of the Seller’s property without the Seller’s consent.

What happens if the pending sale property does not close? _____

Other forms to note:

38A – Back-Up Addendum to PSA (Appendix I)

- Back-up Buyer can withdraw anytime before being moved into first position.
- Not much downside for Seller, but make sure Seller doesn’t sell house twice – use back-up addendum!
- If first sale fails, Seller must give notice to Back-up Buyer within 3 days then back-up transaction will close at negotiated time period after notice.
- Parties will decide how long back-up offer will be in place.

VERSUS Form 39 – Second Buyer’s Addendum (Appendix J)

- To be used when Seller has accepted a 22B offer and second offer comes in from Second Buyer. Seller can decide what contingencies Second Buyer must waive before the Seller will give bump notice to the 22B (first) Buyer.
- Form also spells out time frames for when Seller is to give notice to 22B (first) Buyer and how long the Seller has to give notice to the Second Buyer of the results of the bump notice to the 22B (first) Buyer.

Form 90K – Contingency Property Notice (Appendix H)

- Buyer to use when Buyer satisfies the sale of their property contingency.
- Buyer to use when contingency property sale fails and Buyer wants to terminate the agreement or reinstate the contingency (assuming there is still time left in the contingency period)
- Buyer to use when waiving the contingency acknowledging they are waiving all other contingencies.

- Also used by the Seller to give notices to Second (bump) Buyer that either the 22B (first) Buyer waived or satisfied the contingency and they are out, or the 22B (first) Buyer terminated and this second sale agreement will now proceed to closing.

Form 90L – Buyer’s Request for Seller’s Consent – Contingent Sale (Appendix K)

- Used by Buyer to get Seller’s consent when required under the terms of the 22B contingency (e.g., closing outside of 30-60 day window or contingent on the 22B contingent Buyer’s buyer contingency).
- Seller will also respond on this form.

D. Form 35 – Inspection Addendum to PSA (Appendix L)

In this addendum, the agreement is conditioned upon the Buyer’s **purely subjective** satisfaction with inspections on the property including but not limited to structural, mechanical and general condition of the improvements, compliance with building and zoning codes, hazardous materials, pest inspection and soils/stability inspection. Do not forget to check this box, however, or the broker may have unwittingly forfeited their Buyer’s right to an inspection.

What two people can perform the inspection?

1. _____

2. _____

Buyer and Seller will negotiate up front whether Buyer may or may not have sewer system scoped.

Buyer’s obligations under the inspection contingency are as follows:

- 1) order the inspection(s),
- 2) choose the inspector (Buyer is solely responsible for interviewing and choosing this person), and
- 3) pay for the inspection(s).

Buyer shall restore the property to the same condition it was prior to the inspection(s) (e.g. if toilet has to be removed to do sewer scope, it must be replaced) and is responsible for any damage as a result of such inspection(s). Buyer is not obligated to provide a copy of the inspection report unless they are invoking their right to additional inspection(s) in which case they must give a copy of the written recommendation only (no other part of the inspection report) by the inspector of the additional inspection(s). **The Buyer shall not, however, provide the inspection report or portions of the report to the Seller unless Seller requests otherwise** (this provision was added to the form in July, 2019). The Buyer may ask the Seller to make any corrections, regardless of whether they were cited by an inspector.

Best practice: Buyer’s broker should not reference the inspection report in the **Form 35R – Inspection Response (Appendix M)**. Rather, if Buyer needs more time, Buyer should invoke

additional inspection time period to bring in contractor to evaluate issue and give bid for repairs which should be attached to the 35R – Inspection Response.

Buyer has 4 options upon the end of the negotiated inspection period (Buyer's Notice) – 10 days unless negotiated otherwise:

1. approve the inspection and waive the contingency,
2. disapprove the inspection and terminate the agreement,
3. request further inspection(s) in which case the inspection period will be extended by the negotiated time period and shall commence on the day after the notice of additional inspection(s) is given, or
4. propose corrections or modifications to the agreement.

If the Buyer fails to give any notice at the end of the inspection time period, the contingency is deemed waived.

Seller must give notice within the negotiated time period and has 4 options upon receipt of a notice for corrections or modifications from the Buyer (Seller's Response) – 3 days unless negotiated otherwise:

1. agree to the corrections or modifications at which time the contingency is now satisfied,
2. agree to some of the corrections or modifications,
3. reject all corrections or modifications, or
4. offer different or additional corrections or modifications.

Buyer shall have the negotiated time period to reply to the Seller's response to their request for corrections or modifications (assuming the Seller did not agree to the proposed corrections and modifications). In this, the Buyer's Reply within 3 days unless otherwise negotiated, Buyer shall have 3 options:

1. accept the Seller's response at which time the contingency is deemed satisfied,
2. agree with the Seller on other remedies (e.g., resolve in further negotiations), or
3. disapprove the inspection and terminate the agreement receiving a refund of the earnest money.

Note: Assuming the parties go with the default time lines, keep in mind the 10-3-3 three-step dance which is the inspection negotiation dance. The Buyer has the initial 10 days to give their inspection notice. The Seller has 3 days to give their response. The Buyer now has 3 days to reply to the Seller's response. It is important to make sure the Buyer understands that if they are going to engage in the "whining dance" (attempting to get the Seller to do more than the Seller offered in their response) then, if the Buyer's 3-day reply period goes by without any resolution, the contingency is deemed satisfied and the Seller does not have to do any corrections or modifications (not even the ones they agreed to do in their initial response).

If the Seller has agreed to corrections, the work must be done in a "commercially reasonable manner" (duct tape is not an appropriate fix for a leaking trap) and the work must be completed within the negotiated time frame prior to closing and the Buyer may have the

corrections re-inspected at Buyer's expense. If Buyer agrees to pay for any repairs prior to closing the parties are advised to seek the counsel of an attorney to review the terms of that agreement.

Buyer may inspect for oil storage tanks, but can only go so far as to determine the existence of one, but cannot go digging.

Buyer is advised to have special inspections of the on-site sewage system as they are subject to strict governmental regulation and occasionally malfunction or even fail.

Buyer may check box #2 to condition the agreement on the subjective satisfaction with a neighborhood review during the negotiated time period. The neighborhood review is of such things as schools, proximity to bus lines and shopping, traffic patterns, noise, parking, etc. to include the existence of sex offenders.

If the Buyer conducted a pre-inspection and will move forward in the transaction without further inspection, check box #3.

If the Buyer is going to waive the inspection, check box #4.

PRACTICE TIP: Either box #1, 3 or 4 should be checked.

E. Form 35R - Inspection Response (Appendix M)

This form will help the parties navigate the inspection contingency with the three sections:

- 1. Buyer's Inspection Response or Request for Repairs or Modifications – 4 options**
- 2. Seller's Response to Buyer's Request for Repairs or Modifications – 4 options**
- 3. Buyer's Reply to Seller's Response – 3 options with the third option being risky because if the Buyer cannot get the Seller to agree by the end of the negotiated time period, and the Buyer does not terminate the transaction, the transaction is moving forward with no repairs. Time frames do not repeat!**

Best business practice for buyer's broker as noted above is for Buyer to get a bid from their contractor and attach it to the 35R. Seller may want to have their own contractor give a bid and reply with a different contractor's bid (or that Seller will do the work themselves). The major drawback to this approach is whether the Buyer will have time to get a bid, thus they may need to invoke their additional inspection period.

Notes:

- 1. Be very careful to meet all timelines!**
- 2. Buyer should not pay for repairs prior to closing (should be advised, in writing, to seek legal counsel before doing so).**

F. Closing and Possession Provisions in the PSA

The closing and possession provisions in the PSA state the sale shall be closed by the closing agent on the closing date as negotiated by the parties and stated on page 1 of the PSA. If the closing date falls on a Saturday, Sunday, legal holiday, or day when the county recording office is closed, the closing agent shall close the sale on the next business day. Closing is defined in this provision as the day when the transaction is recorded and sale proceeds, if any, are available to the Seller). Title transfer and possession do not necessarily transfer at the same time.

PRACTICE TIP: Do not use the word "funding" in the PSA paperwork. It is confusing and means different things to different people. Stick with the defined term, "closing."

The PSA obligates the Seller to use best efforts to maintain the property until Buyer is provided possession. If Seller fails to maintain the property, or if an accident causes material damage, the Buyer may cancel the deal. Insignificant damage is not intended to provide a basis for termination (normal wear and tear). Unfortunately, there is no "bright line" test to determine what is normal wear and tear. In general, however, those are items and conditions which a reasonably prudent person would consider to be significant in deciding whether to enter into or continue with the transaction on those terms would be considered material. If an appliance, system, etc. become inoperative prior to closing, the Seller agrees to repair or replace with an appliance or system of equal quality. A very important right associated with confirming the absence of material damage is the walk through within 5 days prior to possession. This walk through is used to confirm that there is no material damage which was not present when the offer was made or which was previously concealed. This section also provides the Seller will not enter into nor modify any leases or agreements, service contracts or other agreements which affect the property with terms extending beyond closing without the Buyer's consent.

The parties will also negotiate a possession date on page 1 of the PSA. Seller shall deliver keys and garage door remotes to the Buyer on possession or closing whichever occurs first. Typically, possession shall be on "closing" (again, deed is recorded and sale proceeds are available to the Seller). Possession is technically to transfer at 9:00 pm, but in practice, often possession transfers during business hours since this is most convenient, but Buyer should not assume possession earlier in the day will be ok with the Seller.

If the Buyer and Seller agree to possession other than at closing, they are either entering into an early or delayed possession arrangement. It is imperative the parties execute a rental agreement at the time of the PSA and not wait until later. The PSA provision provides the Buyer and Seller will execute a **Form 65A – Rental Agreement – Buyer Occupancy Prior to Closing (Appendix N)** or **Form 65B – Rental Agreement - Seller Occupancy After Closing (Appendix O)** as applicable and contact their respective insurance companies to assure appropriate policies are in place if early or delayed possession is being negotiated.

Finally, this section provides information about the state statutes (RCW 19.27.530 & 43.44.110) governing the Seller's obligation to install carbon monoxide alarms in accordance with the state building code, as well as a smoke detection device and that the brokers and firms are to be held harmless from any claim resulting from Seller's failure to install CO alarm(s) or smoke detector(s) in the property.

G. VA Loan Program

1. **The basics:** VA loans are available to qualified veterans and used to buy primary residences or refinance existing loans

What are the 3 main benefits to a veteran borrower with a VA loan?

1. _____
2. _____
3. _____

See **Appendix P – VA Guaranteed Loan** sheet which can be found at:

http://www.benefits.va.gov/BENEFITS/factsheets/homeloans/VA_Guaranteed_Home_Loans.pdf

2. **Updates the Veteran's Administration has adopted with regard to the VA loan program especially with regard to what costs the veteran borrower can and cannot pay.** In an effort to keep VA loan affordable, the VA loan program only allows certain costs to be paid by the veteran borrower while others cannot be paid by the veteran borrower (also known as non-allowable costs):

Costs the VA Borrower Can Pay:	Costs the VA Borrower Cannot Pay:
Funding fee	Attorney's fees beyond attorney's work in examining title
Origination fee to the lender though limited to 1% of the loan amount	Brokerage fee such as a Buyer's representation fee (VA expects all brokerage fees to be paid by the Seller)
Appraisal fee by VA approved appraisers	Additional lender fees beyond the 1% origination fee such as doc prep, notary or underwriting fees
2 nd appraisal if borrower is requesting reconsideration	2 nd appraisal if requested by lender or 3 rd party
Recording fees and taxes associated with recording	Prepayment penalties
Credit report	HUD or FHA inspection fees for builders – on new construction, inspection fees must be paid by the builder or sponsor, not the Buyer

Hazard insurance and prepaids such as taxes or assessments	
Flood certification	Flood certification fee if such fee is included by the lender or appraiser in their services
Survey if required by lender	
Title insurance	
One-time fee for the Mortgage Electronic Registration System (MERS) to cover to cost of tracking loans beneficial interest and servicing rights	
VA may authorize additional fees	
Lender may make specific requests to the VA for charges to the borrower	

- a. As part of the Blue Water Navy legislation, Congress also authorized the following changes to the VA Home Loan benefit beginning on January 1, 2020 for ALL eligible Veterans:

- **VA Loan Funding Fee Change** - At this time, there is a temporary change to the VA Funding Fee, which is a congressionally mandated fee associated with the VA Home Loan. Veterans and Service members will see a slight increase of 0.15 to 0.30% in their funding fee (currently for two years), while National Guard and Reserve members will see a slight decrease in their fee to align with the fee paid by 'Regular Military' borrowers (permanent). Veterans with service-connected disabilities, some surviving spouses, and other potential borrowers are exempt from the VA loan funding fee and will not be impacted by this change.
- **Purple Heart** - If you are an active duty Service member who has earned a Purple Heart, your funding fee can be waived if you close on your home while still serving on active duty.
- **Conforming Loan Limits** - Veterans will have greater access when using their no-down payment home loan benefit. Veterans seeking to obtain what are commonly referred to as "jumbo" loans, or Veterans living in higher-cost markets, will no longer be subject to the Federally-established conforming loan limit maximums. After January 1, Veterans may obtain no-down payment VA-backed loans in all areas of the country, regardless of home prices.
- **Native American Direct Loan** - The new law removes the loan limit of \$80,000 for Veterans using their entitlement for a VA Native American Direct loan to build or purchase a home on Federal trust land. Eliminating the loan limit enhances access to home loan benefits for Native American Veterans.

Several provisions of the law interact to impact the cost for Veterans using their home loan benefits. Beginning on January 1, the VA Funding Fee will increase for some Veterans,

however, the effective 'cap' on VA no-down payment loans will be eliminated. See <https://benefits.va.gov/homeloans/bwnact.asp>

3. **How are VA loan limits established by area and where to find information to verify the loan limit for the areas they serve.**
 - a. VA loans are no longer subject to loan limits except the extent that the borrower is qualified for the loan according to the lender. A limit is placed on how much the VA will insure, in turn this affects how much the lender will lend.
 - b. Loan limits differ from county to county since house prices differ from county to county. Starting January 1, 2020 the loan limits will be established by the Federal Housing Finance Agency (FHFA) which is the federal agency that supervises Fannie Mae & Freddie Mac.

Loan Limits in Washington as of January 1, 2020 which can be found at:
<https://www.fhfa.gov/DataTools/Downloads/Pages/Conforming-Loan-Limits.aspx>

Washington Counties:	1 Unit	2 Units	3 Units	4 Units
King, Pierce & Snohomish	\$741,750	\$949,600	\$1,147,800	\$1,426,450
Spokane, Pend Oreille, Lincoln, Stevens and all other counties besides the 3 above	\$510,400	\$653,550	\$789,950	\$981,700

TOPIC AREA II: LEGISLATIVE UPDATE

A. Legislation Regarding Changes to the Washington State Real Estate Excise Tax (REET)

1. **The REET was overhauled in the 2018-19 legislative session (ESSB 5998) from a flat fee to a tiered rate structure.**

What is a Real Estate Excise Tax? _____

The REET generates in excess of \$200,000,000 in revenue to the state each year!

When is the REET paid? _____

Counties will not record a deed without the payment of the REET.

Who usually pays the REET? _____

An unpaid REET is a lien against the property, so a Buyer will want to ensure that it gets paid at closing.

Before the new law was adopted, the REET was a flat rate of 1.28% plus local jurisdictions could add an additional rate up to .5%. In most parts of Washington therefore, the REET was a flat rate of 1.78%. As of January 1, 2020, the REET is a tiered rate – See **Appendix Q – Real Estate Excise Tax (DOR) & Appendix R – Real Estate Excise Tax Affidavit (DOR)**:

Sales Price	State portion of the real estate excise tax rate*	Total REET including local jurisdiction rate (e.g., including .5% local jurisdiction rate)
For the first \$500,000	1.10%	1.60%
For the amount between \$500,000-\$1.5 million	1.28%	1.78%
For the amount between \$1.5 million -\$3 million	2.75%	3.25%
Form any amount over \$3 million	3%	3.50%

* add any local jurisdiction rate (e.g., plus .5% in most parts of Washington)

Note: Important exception is agricultural and timber land which is still taxed at the old rate of 1.28% regardless of the selling price.

Exercises:

1. Calculate the REET for a sales price of \$350,000: \$_____ x _____% = \$_____

2. Calculate the REET for a sales price of \$745,000: \$_____ x _____% = \$_____
+ \$_____ x _____% = \$_____
= Total REET: \$_____

3. Calculate the REET for a sales price of \$1,650,000: \$_____ x _____% = \$_____
+ \$_____ x _____% = \$_____
+ \$_____ x _____% = \$_____
= Total REET: \$_____

4. Calculate the REET for a sales price of \$3,100,000: \$_____ x _____% = \$_____
+ \$_____ x _____% = \$_____
+ \$_____ x _____% = \$_____
+ \$_____ x _____% = \$_____
= Total REET: \$_____

2. What types of properties are exempt from paying the REET?
 - a. gifts
 - b. inheritance
 - c. condemnation proceedings
 - d. transfers pursuant to bankruptcy

3. The REET applies to the transfer of a controlling interest in an entity (e.g, LLC or corporation) that owns real property.
 - a. Controlling interest means 50% or more ownership interest in the entity.
 - b. Transfers of at least 16% must be reported to the state.
 - c. Prior to 2020, the state would look at a 12-month period to determine whether a taxable transfer of a controlling interest had occurred. Starting January 1, 2020, that time period has been expanded to 36 months.

B. Changes to Business and Occupation (B&O) Tax Rates

What is the B&O tax and what is it paid on? _____

1. Previously, the B&O tax for service oriented businesses was 1.5%. Starting January 1, 2020, there will be a **surcharge added for selected service businesses** which will raise the effective rate to 1.8%.
 - a. increase affects wholesalers, publishers, broadcasters, insurance carriers and data processors
 - b. Thanks to the efforts of Washington REALTORS®, real estate services are exempt from this increase - go RPAC!

C. Clarification of Protected Classes under Federal and State Fair Housing laws

Federal and state laws prohibit discrimination in real estate transaction services.

1. The federal law against discrimination (42 U.S. Code §3601) is called the _____
_____ and can be found at:

https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview

- a. the federal law creates the following seven protected classes
 1. race
 2. color
 3. religion

4. sex
5. national origin
6. disability*
7. familial status*

* These protected classes were added in the 1988 amendments to the Fair Housing Act.

2. The Washington fair housing law (RCW 49.60.222) is called the _____

- a. the state law creates a more extensive list of 11 protected classes
 1. sex
 2. marital status*
 3. sexual orientation or gender identity* (added in 2006)
 4. race
 5. creed
 6. color
 7. national origin
 8. families with children status
 9. honorably discharged veteran or military status*
 10. the presence of any sensory, mental or physical disability
 11. the use of a trained guide dog or service animal*

* These four are the additional protected classes under the state law that are not protected classes listed under the federal law. Citizens (licensees, as well as our clients and customers) are bound by the more restrictive law.

Notes:

1. NAR prohibits discrimination in the Code of Ethics and prohibited discrimination on the bases of sexual orientation and gender identity starting in 2009. NAR issued a demographic study of gay, lesbian and bisexual buyers and sellers that found younger generations are more likely to identify as gay, lesbian and bisexual so as the younger generations (millennials, etc.) make up more and more of the housing market, LGB buyers and sellers are likely to continue increasing. See **Appendix S - REALTORS® Release First Profile on LGB Buyers and Sellers.**

2. Washington REALTORS® is working on implementing more tools and education regarding fair housing as a result of a recently released Newsday investigation revealing evidence of widespread fair housing violations by real estate agents on Long Island, New York. Watch the documentary at:

<https://projects.newsday.com/long-island/real-estate-agents-investigation/>

B. Landlord-Tenant Law Update from the 2019-20 Legislative Session

There were several recent developments in the Washington Residential Landlord-Tenant Act (RCW 59.18) most of which provide additional protection to tenants requiring notice/longer notice in certain circumstances including:

Notice for:	Timeline
1. Rent Increases (HB 1440)	60 days no matter the size of the increase
2. Economic Evictions (SB 5600)	14 days (was only 3)
3. Changes to Building (HB 1462)	120 days so tenant has adequate time to find new housing

1. Notice for increases in rent in subsidized housing where the rent is based on the tenant's income is still 30 days.
2. Economic Evictions: notice to pay or vacate which is a notice that the tenant failed to make appropriate rent payments and that the lease may be terminated.
 - a. Unlawful detainer action (legal eviction) may commence if the tenant does not catch up on the rent.
 - b. The form of the notice has also changed requiring the landlord to provide information about where to find legal assistance and interpretive services.
 - c. "Rent" is now more narrowly defined: only monthly recurring charges, not including late charges, damage fees or other deposits.
 - d. When a tenant makes a payment, it must be first applied to "rent" (recurring charges) rather than any other unpaid fees or charges.
 - e. Court cannot award the landlord more than \$75 total for tenant's accrued late fees. Nor can the court require the tenant to pay the landlord's attorney fees if the judgment against the tenant is under \$1,200 or two month's rent, whichever is greater.
3. Changes to building include:
 - a. building demolition,
 - b. major rehabilitation, or
 - c. changes in the building's use

See Appendix T – 2019 Changes to Washington's Landlord-Tenant and Eviction Laws

TOPIC AREA III: BUSINESS PRACTICES UPDATE AND PROFESSIONALS STANDARDS

A. Professional cooperation with fellow licensees, as well as the public

1. The National Association of REALTORS® published the **Pathways to Professionalism** in 2013 and revised it in 2019. The Pathways to Professionalism provides a list of 42 suggestions on elevating one's business practices to a more professional level (see **Appendix U - NAR's Pathways to Professionalism**). The Pathways to Professionalism is divided into three sections: Respect for the Public, Respect for Property and Respect for Peers and can be found at:
<https://www.nar.realtor/code-of-ethics-and-arbitration-manual/pathways-to-professionalism>

a. Respect for the Public

- i. At the top of the list is the Golden Rule: Do unto others as you would have them do unto you.
- ii. Knowing all 21 suggestions in this category are important, what are the three suggestions under the Respect for the Public section that stand out to you/you see as current issues in our industry?

1. _____
2. _____
3. _____

b. Respect for Property

- i. This section is largely focused on keeping property a licensee is showing clean and in the same condition as when they first entered it.
- ii. Also note the suggestion regarding Seller's instruction regarding photographing or videographing the property interior or exterior. In this day and age of video showings, etc., respect the Seller's privacy.

c. Respect for Peers

- i. Knowing all 12 suggestions in this category are important, what are the three suggestions under the Respect for Peers section that stand out to you/you see as current issues in our industry?

1. _____
2. _____
3. _____

Note: Failure to comply with the Pathways to Professionalism is not necessarily a basis for professional disciplinary action such as a Code of Ethics complaint.

B. A Managing Broker's responsibilities with regard to managing a firm or branch office or as a team leader include the following (See Appendix V - RCW 18.85.275 - Designated broker or managing broker—Authority and duties):

1. **Supervise for compliance with the laws:** The designated broker (DB) or managing broker (MB) shall supervise the conduct of brokers and MBs for compliance with this chapter (RCW 18.85 – licensing law), RCW 18.235 (Uniform Regulation of Businesses and Professionals Act), and RCW 18.86.030 (Agency Law – Duties of a Broker)
2. **Oversight of documents and funds including timely delivery to the firm:** Listings, transactions, management agreements, and other contracts relating to providing brokerage services are property of the real estate firm. Brokers shall timely deliver to their appointed managing broker all funds and records required to be held or maintained by the real estate firm. A MB is responsible for such funds and records only after they are received from the broker. A MB shall timely deliver to the DB all funds and records required to be held or maintained by the real estate firm. The DB is responsible for such funds and records only after they are received from the MB or broker.
 - a. Note: a broker is responsible for transactions and funds until they are turned in to the MB or DB.
3. **Delegation Agreements must be in writing:** The DB may delegate by written agreement the duties of safe handling of client funds, maintenance of trust accounts, and transaction and trust account records, along with supervision of brokers, to a MB licensed to the firm. The DB shall maintain a record of the firm's MBs and delegations to MBs.
4. **Authority to handle brokerage service contracts on behalf of the firm:** The DB or the DB's delegate has the authority to amend, modify, bind, create, rescind, terminate, or release real estate brokerage service contracts on behalf of the real estate firm.
 - a. Note: Only the DB has the authority to accept new or transferred licensees to represent the real estate firm.
5. **Must be licensed as a MB if supervising other brokers:** A broker who supervises or exercises right of control over other brokers in the performance of real estate brokerage services must be licensed as a MB.
6. **"Baby brokers" required heightened supervision:** During the first two years of a broker's licensure, a MB must provide a heightened level of supervision as provided by rule of the director.
7. **Other responsibilities of a MB could include:**
 - a. cooperating with the Department of Licensing in investigations, audits and licensing matters

- b. following and enforcing the firm's policy on referring home inspectors and using Form 41D when necessary
 - c. following and enforcing the rules regarding safe handling of client funds, timely delivery of client funds and property and legal advertising
- 8. A DB may delegate other responsibilities to a MB including, but not limited to the following:
 - a. establish a policy and procedures manual for the firm including such things as handing client funds and property
 - b. reviewing contracts and documents as submitted to the firm
 - c. trust account reconciliation monthly
 - d. ensuring licensees working for the firm are properly licensed (license audits)

C. Timely presentation of all written offers per RCW 18.86.030 (1)(c)

A licensee is required to present all written offers in a timely manner, specifically: *c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase...*

Note: a violation of RCW 18.86.030 (agency law) is a de-facto violation of RCW 18.85.361 (the license law).

1. What is meant by the requirement to present all written offers, written notices and other written communications? _____

2. What is the definition of "a timely manner"? _____

 - a. Does "timely" necessarily mean immediately? _____
 - b. When **does** "timely" mean immediately? _____

D. Multiple Offer Scenarios

- 1. Licensees should help Sellers evaluate offers based on the Buyer's ability to close on the terms that are acceptable to the Seller.** The goal of the listing broker should be to get the Seller the most money, but also to get the transaction closed (e.g., the highest price offer may face appraisal issues or be a less qualified Buyer).
 - a. spreadsheet approach
 - b. Buyer love letters do give the Buyer a chance to explain their particular reasons they love and want to purchase the Seller's home beyond the terms of the PSA (e.g., we love the garden, neighborhood or some feature of the property), but love letters can be problematic as they can contain discriminatory information leading the parties down a path toward fair housing violations.
- 2. How can a licensee help a Seller avoid evaluating offers based on discriminatory information or protected classes?**
 - a. licensees could consider the sealed envelope approach
 - b. Department of Licensing can take action against a licensee complicit in a fair housing violation via a love letter and the licensee's license can be suspended or revoked, the licensee can face a fine and/or be required to complete a fair housing course.
 - c. Licensee should consult with their DB if the letter is questionable.

Note: Violation of the licensing law is also punishable as a gross misdemeanor.

- 3. Seller and Buyer options when facing multiple offer situations.**
 - a. Buyer should be counseled to make offer as strong as possible including:
 - i. being pre-approved for their loan
 - ii. larger than usual earnest money
 - iii. higher purchase price (perhaps even over the asking price)
 - iv. removing/minimizing contingencies
 - v. shorter closing period
 - vi. could consider using Form 35E – Escalation Addendum though the licensee should explain the risks and rewards and Buyer should only use if they are ready, willing and able to pay the cap
 - b. In representing the Seller, counsel as follows:
 - i. help the Seller to evaluate all offers and determine which suits the Seller's situation best which does not always mean the highest net offer – other factors may be more important to the seller such as types of contingencies, financing vs. cash, etc. (spreadsheet approach)
 - ii. evaluation NEVER includes a discussion of protected classes
 - iii. Seller may want a Form 22EF – Evidence of Funds included in the transaction if the Buyer did not include it in their initial offer to ensure Buyer has the funds to close

- iv. Seller has many options in responding to a multiple offer situation
– See **Appendix W - NAR's A Buyers' & Sellers' Guide to Multiple Offer Negotiations** which can be found at:

<https://www.nar.realtor/about-nar/policies/professional-standards-and-code-of-ethics/a-buyers-and-sellers-guide-to-multiple-offer-negotiations>

- 4. **Of course, time is of the essence when presenting offers in a multiple-offer situation.** In this situation, immediately, or at least ASAP, is “timely” because if the Seller accepts an offer and a higher offer has come in they did not get to see, this is a problem!
- 5. **Best practices in multiple offer situations:** a professional and cooperative attitude between all parties and licensees is in everyone’s best interest!
 - a. Confirm receipt of all offers.
 - b. Present all offers to the Seller.
 - c. Communicate result of offer presentation to all buyer’s brokers who submitted written offers – in writing.

Note: Good communication is essential! Licensees should respond to all communications from other licensees in a timely and professional manner – return calls, reply to texts and answer emails. Timely communication is the best way to make sure a small problem does not become a large one!

Final thought: Do not stoop to the level of a less professional colleague who is rude, incompetent, short-tempered or even a bully. Always remain professional and reply in a business-like manner. However, if issues persist, and poor communication is getting in the way of the licensee being able to serve their client, the licensee should see their managing broker or designated broker as they may be able to offer advice and may need to intervene.

**Current Issues in Washington Residential Real Estate
(Core Curriculum 2020-21)**

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