

## HOUSE BILL NO. HB0259

Designated real estate agents.

Sponsored by: Representative(s) Gingery and Senator(s)  
Larson and Perkins

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), (vii) and by  
14 creating new paragraphs (ix) through (xii), 33-28-302(a)  
15 through (f) and by creating new subsections (h) through  
16 (o), 33-28-303(a)(intro), (iii)(A), (C) through (E), (G),

1 (b)(intro) and (c), 33-28-304(a)(intro), (iii)(A), (C)  
2 through (E), (G), (b) and (c), 33-28-305(a), (b)(intro),  
3 (f)(iv) and (g), 33-28-306(a)(intro), (i), by creating a  
4 new paragraph (vi) and (b) through (d), 33-28-307(a)(intro)  
5 and 33-28-308(a) through (d) and (f) through (h) are  
6 amended to read:

7

8 **33-28-301. Definitions.**

9

10 (a) As used in this article:

11

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

18

19 (vii) "Seller's agent" means ~~a broker~~an agent  
20 who is authorized to represent and act for the seller in a  
21 real estate transaction;

22

1           (ix) "Customer" means a party to a real estate  
2 transaction with whom the licensee has no agency  
3 relationship;

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

9  
10           (A) A broker;

11  
12           (B) An associate broker; or

13  
14           (C) A salesman under the direct supervision  
15 of the broker or an associate broker, neither of which is  
16 an agent in the real estate transaction.

17  
18           (xi) "In-house real estate transaction" means a  
19 real estate transaction wherein the buyer and the seller or  
20 the landlord and the tenant are both represented by agents  
21 within the same real estate firm;

22  
23           (xii) "Licensee" means an individual licensed  
24 under W.S. 33-28-102(a) (ix).

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

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4

5

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

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(c) When engaged in any of the activities enumerated in W.S. 33-28-102(a)(iii), a ~~broker~~ licensee may act as ~~a subagent with the duties and responsibilities set forth in W.S. 33-28-303(g),~~ an intermediary only pursuant to a written agreement ~~between the seller and the seller's agent~~

1 ~~authorizing an offer of subagency to other brokers~~ with the  
2 seller or buyer which discloses the duties and  
3 responsibilities set forth in W.S. 33-28-305.

4  
5 (d) ~~When engaged in any of the activities enumerated~~  
6 ~~in W.S. 33-28-102(a)(iii), a broker may act as an~~  
7 ~~intermediary only pursuant to a written agreement with the~~  
8 ~~seller or buyer which discloses the duties and~~  
9 ~~responsibilities set forth in W.S. 33-28-305.~~ A customer  
10 relationship shall be deemed to exist between a licensee  
11 and any party to a real estate transaction unless a single  
12 agency or intermediary relationship is established through  
13 a written agreement between the licensee and the party or  
14 parties. A licensee owes no fiduciary duties to a customer  
15 in a customer relationship.

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

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2 (f) A ~~broker, associate broker or salesman~~ licensee,  
3 licensed pursuant to article 1 of this chapter, may  
4 complete standard forms and shall explain to the parties  
5 the effects thereof, if the ~~broker, associate broker or~~  
6 ~~salesman~~ licensee is performing the activities enumerated  
7 or referred to in W.S. 33-28-102(a)(iii) in the transaction  
8 in which the forms are to be used.

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, landlord, buyer or  
14 tenant as a designated agent. For an in-house real estate  
15 transaction, 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 the broker or an associate broker, neither of which is an  
23 agent in the real estate transaction.

24

1       (j) The agency relationship established between the  
2 seller, landlord, buyer or tenant and a designated agent,  
3 including the duties, obligation and responsibilities of  
4 that relationship shall not extend to the responsible  
5 broker nor to any other licensee employed or engaged by  
6 that responsible broker who has not been so designated and  
7 shall not extend to the firm, partnership, limited  
8 liability company, association, corporation or other entity  
9 that employs such licensee.

10  
11       (k) A licensee may work as an agent for the seller or  
12 a landlord treating the buyer or tenant as a customer or as  
13 an agent for the buyer or tenant treating the seller or  
14 landlord as a customer but not as an agent for both the  
15 seller and the buyer or both the landlord and the tenant.  
16 A licensee may be designated to work for both the seller  
17 and the buyer or both the landlord and the tenant in the  
18 same transaction as an intermediary for both. The  
19 applicable designated relationship shall be disclosed in  
20 writing to the seller or landlord and buyer or tenant at  
21 the earliest reasonable opportunity. A designated agent  
22 may work with a seller or landlord in one (1) real estate  
23 transaction and work with a buyer or tenant in a separate  
24 real estate transaction.

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2 (m) No seller, buyer, landlord or tenant shall be  
3 vicariously liable for an agent's acts or omissions that  
4 have not been approved, directed or ratified by seller,  
5 buyer, landlord or tenant.

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7 (n) Nothing in this section shall be construed to  
8 limit the responsible broker's responsibility to supervise  
9 licensees associated with the broker or firm or to shield  
10 the broker from vicarious liability.

11

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

14

15 **33-28-303. Seller's agent engaged by seller.**

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

19

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

23



1 (A) To seek a price and terms which are  
2 acceptable to the seller, except that the ~~broker~~licensee  
3 shall not be obligated to seek additional offers to  
4 purchase the property while the property is subject to a  
5 contract for sale;

6  
7 (C) To disclose to the seller adverse  
8 material facts actually known by the ~~broker~~licensee;

9  
10 (D) To counsel the seller as to any  
11 material benefits or risks of a transaction which are  
12 actually known by the ~~broker~~licensee;

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

18  
19 (G) ~~To disclose to~~Informing the seller  
20 that ~~because the broker or authorized subagent is acting as~~  
21 ~~an agent for the seller,~~ the seller may be vicariously  
22 liable for the acts of the ~~broker and authorized subagent~~  
23 ~~while acting within the scope of the agency relationship~~  
24 seller's agent that are approved or ratified by the seller.

1

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

5

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

18

19 **33-28-304. Buyer's agent engaged by buyer.**

20

21 (a) A ~~broker~~-licensee engaged by a buyer to act as a  
22 buyer's agent shall have the following duties and  
23 obligations:

24

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

3

4 (A) To seek a price and terms which are  
5 acceptable to the buyer, except that the ~~broker~~-licensee  
6 shall not be obligated to seek other properties while the  
7 buyer is a party to a contract to purchase property;

8

9 (C) To disclose to the buyer adverse  
10 material facts actually known by the ~~broker~~-licensee;

11

12 (D) To counsel the buyer as to any material  
13 benefits or risks of a transaction which are actually known  
14 by the ~~broker~~-licensee;

15

16 (E) To advise the buyer to obtain expert  
17 advice as to material matters about which the broker knows  
18 but the specifics of which are beyond the expertise of the  
19 ~~broker~~-licensee;

20

21 (G) ~~To disclose to~~ Informing the buyer that  
22 ~~because the broker is acting as the agent for the buyer,~~  
23 the buyer may be vicariously liable for the acts of the  
24 ~~broker while he is acting within the scope of the agency~~

1 ~~relationship~~ buyer's agent that are approved, directed or  
2 ratified by the buyer.

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

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

14  
15 **33-28-305. Intermediary.**

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

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

1

2 (f) An intermediary may do the following without  
3 breaching any obligation or responsibility:

4

5 (iv) Serve as an agent, ~~subagent~~ or intermediary  
6 for the same or for different parties in other real estate  
7 transactions.

8

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

11

12 **33-28-306. Agency relationships.**

13

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

24

1 (i) A description of all the different ~~brokerage~~  
2 agency relationships allowed by this article and a  
3 statement that the commission for different relationships  
4 is negotiable;

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

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 relationships to the parties to the transaction and to the  
4 public.

5

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

7

8 (a) A ~~broker~~ licensee acting as an agent to a buyer  
9 or seller with respect to a particular real estate  
10 transaction may instead act as an intermediary to ~~that~~  
11 ~~party~~ the parties only in instances when ~~+~~ both parties  
12 execute a written consent, at the earliest reasonable  
13 opportunity after the events creating the potential  
14 transaction develop, which contains a conspicuous statement  
15 of the duties and obligations that would no longer be owed  
16 to the parties if the licensee becomes an intermediary and  
17 not an agent.

18

19 **33-28-308. Compensation.**

20

21 (a) In any real estate transaction, the ~~broker's~~  
22 licensee's compensation may be paid by the seller, the  
23 buyer, a third party, or by the sharing or splitting of a  
24 commission or compensation between ~~brokers~~ licensees.

1

2 (b) Payment of compensation shall not be construed to  
3 establish an agency relationship or intermediary  
4 relationship between the ~~broker~~ licensee and the party who  
5 paid the compensation.

6

7 (c) A seller may agree that an intermediary, or  
8 buyer's agent ~~or subagent~~ may share the commission or other  
9 compensation paid by the seller with another ~~broker~~  
10 licensee.

11

12 (d) A buyer may agree that a seller's agent, or  
13 intermediary ~~or subagent~~ may share the commission or other  
14 compensation paid by the buyer with another ~~broker~~  
15 licensee.

16

17 (f) Prior to entering into a written agreement with  
18 the seller and buyer, or prior to entering into a contract  
19 to buy or sell, the ~~broker~~ licensee shall disclose in  
20 writing to the seller and buyer to the transaction, the  
21 ~~brokerage~~ agency relationship of all parties, persons and  
22 entities paying compensation or commissions to the ~~broker~~  
23 licensee.

24



1 (g) A ~~broker~~-licensee may be compensated by more than  
2 one (1) party for services in a transaction, if those  
3 parties have consented in writing to the shared payment  
4 prior to seller and buyer entering into a contract to buy  
5 or sell.

6  
7 (h) An agreement authorizing a ~~broker~~-licensee who  
8 originally agreed in writing to act as an agent to a buyer  
9 or seller with respect to a particular real estate  
10 transaction to act instead as an intermediary to that  
11 party, shall provide that the party agreeing to the new  
12 relationship shall not be liable for any commission greater  
13 than the commission the party would have been liable to pay  
14 under the initial agreement. Any contract provision in  
15 violation of this subsection is void and unenforceable.

16  
17 **Section 2.** W.S. 33-28-301(a)(viii), 33-28-303(f) and  
18 (g) and 33-28-307(a)(i)and (ii) are repealed.

19  
20 **Section 3.** This act is effective July 1, 2007.

21  
22 (END)