WASHINGTON STATE DEPARTMENT OF LICENSING
REAL ESTATE PROGRAMS
EDUCATION UNIT

2018/19 CURRENT ISSUES IN WASHINGTON COMMERCIAL REAL ESTATE COURSE CURRICULUM

UPDATED: September 2017
Developed the Washington State Department of Licensing, Real Estate Education Unit.

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INTRODUCTION

Every two years, the Washington State Department of Licensing (DOL) and Washington State Real Estate Commission (Commission) release a set Current Issues (CORE) curricula specifically designed to provide a mandated three-hour legislative, legal, and business practices update for real estate professionals.

For the 2018/19 CORE curricula, DOL and the Commission utilized the following data points and resources to guide eventual content determinations:

- An alignment review of RCW, WAC and other legislative mandates
- An assessment of real estate compliance data
- An identification of new key issues/trends and out-of-date content/topics based on stakeholder input via survey process conducted April-May, 2017

This 2018/19 edition of the Current Issues in Washington Commercial Real Estate Course Curriculum was adopted by the Commission on September 28, 2017, to be implemented January 1, 2018.

NOTE: With ever-evolving legislative, legal, and business practices in the real estate profession, this curriculum is subject to change. Such changes are often minor, rarely involving more than the modification of a sub-objective or an element of a sub-objective, and in most cases do not constitute re-adoption of the curriculum by the Commission. Should they occur, DOL will post an updated curriculum with such changes to its website at http://www.dol.wa.gov/business/realestate/curriculum.html. Education providers will be expected to show course alignment to such changes within thirty (30) days of the effective date of the changes.¹

¹ WAC 308-124H-850(1)
RECOMMENDED LEARNING LEVELS

Recommended Learning Level:
Current Issues in Washington Commercial Real Estate........................................ B-2

In developing the recommendations for this edition of the Current Issues in Washington Commercial Real Estate Course Curriculum (Commercial CORE), DOL and the Commission also analyzed the recommended topics with respect to desirable learning levels.

Learning levels, known as “Bloom’s Taxonomy,” are described in the designations on the following page. These designations are used to identify the learning level recommended for a particular set of topics. A higher learning level designation assumes that students have also achieved lower designated learning levels.

The educational objectives of the Commercial CORE are intended to provide a mandated three-hour legislative, legal, and business practices update for minimally competent real estate professionals. This course focuses on the following topic areas:

- Topic Area I: Legislative Update
- Topic Area II: Legal Update
- Topic Area III: Business Practices Update

Given the difficulty to attain deep learning levels with only three (3) clock hours of instruction and still cover all required topic areas, topics in this curriculum should be taught at the B-2 Comprehension level.

Additionally, while it is not required to teach subjects in the sequence shown in this curriculum, every education provider must ensure that the courses taught meet the basic learning objectives required to ensure that prospective licensees are minimally competent.

The following page defines and gives examples of the various learning levels.
**Learning Levels**

**B-1 Knowledge**
Knowledge is defined as the remembering of learned material. This may involve the recall of a wide range of material, from specific facts to complete theories, but all that is required is the remembering of the appropriate information.

Examples: Know definitions of common terms, basic concepts, methods and procedures and principles.

**B-2 Comprehension**
Comprehension is defined as the ability to grasp the meaning of material. These learning levels go one step beyond the simple remembering of material and represent the lowest level of understanding.

Examples: Understand and interpret facts and principles.

**B-3 Application**
Application is defined as the ability to use learned material in new situations.

Examples: Apply laws and theories to practical situations. Demonstrate correct usage of a method or procedure.

**B-4 Analysis**
Analysis refers to the ability to study or determine the nature and relationship of the parts.

Examples: Distinguish between fact and inference and evaluate the relevancy of data.

**B-5 Synthesis**
Synthesis refers to the ability to put parts together to form a new whole. Learning outcomes in this area stress creative behaviors, with major emphasis on the formulation of new patterns or structures.

Examples: Propose a plan for an experiment, integrate learning from the different areas into a plan for solving a complex problem.

**B-6 Evaluation**
Evaluation refers to the ability to determine the significance or worth of something by careful study.

Examples: Form a valid opinion through weighing of evidence.
RECOMMENDED HOURLY BREAKDOWN

Required Clock Hours:
Current Issues in Washington Commercial Real Estate...... Total: 3.0 Clock Hours

Though course providers may choose to employ any hourly breakdown that meets the required clock hours for Commercial CORE, the following hourly breakdown is recommended. The breakdown was developed using topic-coverage ratios and subject matter expert input.

Recommended Hourly Breakdown
Topic Area I: Legislative Update..............................................................0.75
Topic Area II: Legal Update.................................................................0.75
Topic Area III: Business Practices Update.......................................1.50

2 Per WAC 308-124H-820(4) a clock hour is a period of fifty (50) minutes of actual instruction.
REQUIRED TOPIC AREAS AND EDUCATIONAL OBJECTIVES
TOPIC AREA I: LEGISLATIVE UPDATE

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

Educational Objective 1: National Legislative Issues
Identify and describe common concepts relating to national commercial real estate legislative issues.

Specifically, the learner will know and be able to identify and describe:

a. 179-D Energy Commercial Building Tax Provision
   i. History and recent expiration (December 31, 2016)
   ii. Purpose of the provision, i.e., improvement of the building’s energy-efficiency via building envelope, HVAC system, hot water, or the interior lighting system
   iii. Benefits, i.e., deduction in the year the upgrade goes into service

b. Lease Accounting
   i. Recent updates to the Financial Accounting Standards Board (FASB) lease accounting standards (February 2016)
   ii. New requirements, i.e., “right-of-use” accounting model where both lessees (renters) and lessors (property owners) recognize assets and liabilities arising from lease contracts
   iii. Effects, i.e., improved transparency, and more consistent and concise financial reporting for investors

c. The “Commercial Risk Retention Rule” and Qualified Commercial Real Estate (QCRE) Loan Regulations
   i. History of the "commercial risk retention rule" (December 24, 2016)
   ii. Purpose and provisions of rule, i.e., 5% risk retention obligation by a commercial mortgage-backed securities (CMBS) sponsor
   iii. Effects and exemptions of Qualified Commercial Real Estate (QCRE) loan regulations as they relate to the rule

Educational Objective 2: Washington Legislative Issues
Identify and describe common concepts relating to Washington commercial real estate 2017 legislative issues.

Specifically, the learner will know and be able to identify and describe:

a. SB 5254 (Passed): Ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.
   i. Bill’s modification of timelines and factors in the review and evaluation program in the Growth Management Act (GMA)
   ii. Bill’s creation of a property tax exemption program for cities and counties to preserve
affordable housing for low-income households
iii. Bill’s extension the $40 surcharge for local homeless housing and assistance to 2029

b. **HB 2186 and SB 5929 (Did not pass): Concerning investing in Washington families by improving the fairness of the state's excise tax system**
   i. Bills’ effort to impose a 7% tax on adjusted Washington capital gains
   ii. Bills’ effort to make changes to the business and occupation tax
   iii. Bills’ effort to reform the real estate excise tax
   iv. Bills’ effort to make transfers of new revenue to the Education Legacy Trust Fund

c. **SB 5239 (Did not pass): Ensuring that water is available to support development.**
   i. Bill’s relation to the Whatcom County vs. Hirst, Futurewise, et al. decision
   ii. Bill’s effort to establish that evidence of potable water for a building permit may include a water well report for a permit-exempt groundwater withdrawal that is not prohibited by Department of Ecology’s (Ecology) water resources rules
   iii. Bill’s effort to allow a local jurisdiction to rely on Ecology's water resources rules when approving a subdivision, dedication, or short subdivision to determine if there is available potable water
   iv. Bill’s effort to allow a county or city to rely on Ecology’s water resources rules in its comprehensive plan under the GMA
   v. Bill’s effort to provide that a water right permit may be conditioned to mitigate impacts to fish or aquatic resources and need not be limited to measures that require water to be replaced

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3It is expected that instructors teach licensees *not* to give legal advice regarding whether an undeveloped parcel has adequate water supply in light of the Whatcom County vs. Hirst, Futurewise, et al. decision and proceeding legislation. The question of whether a proposed water source meets the legal availability requirement in RCW 19.27.097 is a legal question. It is also expected that instructors teach licensees to ensure that their clients receive expert advice on these issues, i.e., to advise clients, *in writing*, to seek the advice of a water specialist (i.e., lawyer, hydrogeologist, etc.). Finally, it is expected that instructors teach licensees that appropriate vacant land forms should be used to explicitly allocate the duty to investigate legal adequacy of water supply for the property. The statewide purchase agreement advises buyers to insure adequate water supply to the property and Form 22L&A includes contingency language related to confirming water supply.
TOPIC AREA II: LEGAL UPDATE

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

Educational Objective 1: Common Complaints/Investigations/Findings
Identify and describe common concepts relating to consumer-driven complaints/investigations/findings received/initiated/issued by DOL. Additionally, describe how and where to file a complaint against a licensee, as well as how and where to view disciplinary actions against licensees.

Specifically, the learner will know and be able to identify and describe:

a. **Failure to timely present all written offer (RCW 18.86.030(1)(c))**
   i. What is meant by the requirement to present all written offers, written notices and other written communications
   ii. Definition of “a timely manner”

b. **Failure to use reasonable skill and care when rendering RE brokerage services (RCW 18.86.030(1)(a))**
   i. Definition of “reasonable skill and care”

c. **Failure to maintain a complete transaction log/file (RCW 18.85.285(1); WAC 308-124C-105)**
   i. Elements of a complete transaction log/file
      1. Trust account records
      2. Other records

Educational Objective 2: Case Studies
Identify and describe common concepts relating to current legal trends.

Specifically, the learner will know and be able to identify and describe:

   i. It is more important than ever for buyers to be advised to conduct thorough inspections prior to purchasing
   ii. Agency Law duty for brokers to disclose material facts actually known by broker; no duty to investigate; reasonable reliance

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4 The following sub-objectives have been identified as consumer-driven complaints/investigations/findings received/initiated/issued by DOL Real Estate Programs Regulatory & Enforcement Unit.
b. **Scope of broker’s license (Cultum v. Heritage House Realtors, 694 P. 2d 630 - Wash: Supreme Court 1985)**
   i. There is a bright line between the practice of brokerage services (as defined in RCW 18.85) and the practice of law, i.e., drafting a contract between two third parties
   ii. When completing earnest money agreements brokers are held to the standard of care of a practicing attorney

   i. The Washington Consumer Protection Act (CPA) is liberally construed so as to protect the public and foster fair and honest competition
   ii. Under the CPA real estate sales clearly constitute “trade” or “commerce”
   iii. Deceptive acts are unlawful under the CPA

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7Instructors are welcome to make licensees aware of more recent court decisions, i.e., Deegan v. Windermere Real Estate/Center-Isle, Inc. 197 Wn. App. 875, 391 P.3d 582 (2017), that highlight the Washington Consumer Protection Act’s (CPA) application to real estate brokers. However, instructors are required to teach all information contained within Educational Objective 2: Case Studies, c. The Washington Consumer Protection Act (RCW 19.86) applies to real estate brokers (Edmonds v. John L. Scott Real Estate, 942 P. 2d 1072 – Wash: Court of Appeals, 1st Div. 1997).
TOPIC AREA III: BUSINESS PRACTICES UPDATE

Educational Objective 1: Organizational Structures, Roles, & Responsibilities
Identify and describe common concepts relating to emerging organizational structures, roles, and responsibilities in the commercial real estate sector. Identify and describe both state and federal compliance issues surrounding emerging organizational structures, roles, and responsibilities in the commercial real estate sector. Additionally, describe where to go for and how to perform license maintenance.8

Specifically, the learner will know and be able to identify and describe:

a. “Teams”
   i. Licensing requirements
      1. Firm assumed names as they relate to the industry term “team”
      2. DOL does not license “teams”
   ii. Responsibilities of brokers/managing brokers on a “team”
      1. Delegation of responsibility to managing brokers
   iii. Supervision
      1. Licensed assistants
      2. Unlicensed assistants

b. The Licensee’s Status as Independent Contractor
   i. The difference between an independent contractor and an employee
      1. Situations where a licensee may be considered an employee
   ii. Income tax, health insurance, and retirement savings issues affecting independent contractors9

c. Broker Personal Safety
   i. Safety systems/plans
      1. Showing safety for sellers
      2. Open house/model homes
      3. Vacant properties
      4. Listing appointments

d. DOL Online Renewal and License Maintenance Features
   i. Online renewal

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9It is not expected that instructors teach licensees the substance of income tax, health insurance, and retirement savings issues, but rather, the fact that a licensee’s status as an independent contractor may impact all and that licensees should seek the advice of experts in all areas.
1. DOL will soon no longer accept paper renewals
2. Ensuring continuing education is complete at renewal
3. Finger printing through MorphoTrust’s IdentoGO

ii. Using your dashboard
   1. Updating information
   2. Online transfer process
      a. Notifying your firm of separation

**Educational Objective 2: Commercial Real Estate Practices**

Identify and describe common concepts relating to emerging commercial real estate practices. Identify and describe both state and federal compliance issues surrounding emerging commercial real estate practices.

Specifically, the learner will know and be able to identify and describe:

**a. Commercial Property Evaluation Standards and Practices**
   i. Differences from residential property
   ii. Evaluation of commercial real estate
      1. Comparables
      2. Valuation, NOI, Cap rates and “cash on cash”

**b. Commercial Leasing**
   i. Agency
   ii. Lease types
      1. Gross
      2. Net
      3. Percentage
      4. Hybrid
   iii. Working with a commercial lease
      1. Commercial property(raw land)
      2. Use (retail, office, industrial, mixed use, etc.)
   iv. Anatomy of a commercial lease
      1. Base line
         a. Date, Parties, premises
      2. Rent, Term, Renewal, TIs
      3. Use Provisions
         a. Maintenance
      4. Tenants
      5. Landlords
      6. Sec Deposit, Assignment and Subletting
      7. Indemnities
         a. Insurance
         b. Waivers
         c. Environmental
         d. Eminent Domain/Condemnation
8. Remedies
   a. Tenants/Landlords
   b. Surrender/Holdover
   c. Subordination/Estoppel

9. Brokerage/Signatures/Guarantees/Exhibits

c. Commercial Property Management
   i. Differences from residential property
   ii. Responsibilities
       1. Conventional
       2. Specialized
   iii. Protocol
       1. Legal
       2. Contractual

d. Professional Cooperation
   i. Engaging with other licensees and outside firms professionally
       1. Working with out-of-state licensees as it relates to RCW 18.85.131
       2. Responding to communications in a timely manner
       3. Solving interpersonal issues
       4. Solving commission issues

Educational Objective 3: Risk Avoidance Reminders
Identify and describe common concepts relating to risk avoidance practices in the commercial
real estate sector.

Specifically, the learner will know and be able to identify and describe:

a. Commercial Real Estate Transaction Forms
   i. Resources available for procuring appropriate forms
   ii. Best practices with regard to completing the forms
   iii. Resources available to help with the completion of transaction documents

b. Statute of Frauds
   i. Effects on real estate transaction (e.g., documentation, including leases, purchase and sale
      agreement, and listings and brokers’ compensation)

c. Seller Disclosure Statement
   i. When and which Seller Disclosure Statement is required
   ii. Completion of the Seller Disclosure Statement form
   iii. When a waiver of the right to receive the Seller Disclosure Statement form is possible
       and how to accomplish the waiver
   iv. Dealing with sellers reluctant to provide a Seller Disclosure Statement
d. **Evolving Flood Insurance Issues and Referring Customers to Flood Insurance Agents**
   i. Referring consumers to information sources for learning about changes to the National Flood Insurance Program (NFIP)\(^{10}\)
   ii. Referring customers to flood insurance agents for flood insurance and *ensuring* not to be the source of rate information

e. **Disclosure and Dual Agency Relationships**
   i. Creating a dual agency relationship by separately entering an agency agreement with both the seller and the buyer
   ii. Complying with statutory requirements for disclosure

f. **Subject Matter Exceeding the Scope of a Broker's License and Making Competent Referrals to Third-Party Vendors**
   i. Identifying subject matter that exceeds the scope of a broker’s license
   ii. Making referrals to third party vendors pursuant to RCW18.86 and RCW 18.235.130

g. **Signatory Authority for Clients**
   i. Recognizing what constitutes signatory authority for clients, i.e., guardians, power of attorney, personal representatives, corporations, LLC’s, trustees

h. **Limitations on Licensees’ Conduct with Regard to Referral of Title Insurance Providers**
   i. Giving or receiving gifts, kick-backs, or money
   ii. Accepting money or things of value
   iii. Denying access to competing title companies
   iv. Requiring consumers to obtain title and services from a title company where the licensee has an interest in the company

i. **Implications of Multi-State Transactions**
   i. Resources available to ensure compliance with other jurisdictions’ license laws when working outside the State of Washington
   ii. Washington law when associating with a licensee from outside Washington providing services inside the state

j. **Copyright and Intellectual Property Rights**
   i. Intellectual property rights in typical listings
   ii. How to avoid infringing the intellectual property rights of others
   iii. How to protect the licensee’s and/or firm’s intellectual property rights from infringement by others

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**Educational Objective 4: Real Estate Advertising**
Identify and describe common concepts relating to emerging real estate advertising techniques.

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\(^{10}\)[https://www.fema.gov/national-flood-insurance-program]
Identify and describe both state and federal compliance issues surrounding emerging real estate advertising techniques. Additionally, describe where to go for information regarding real estate advertising.\textsuperscript{11}

Specifically, the learner will know and be able to identify and describe:

\textbf{a. Licensing Law Requirements and Social Media}
   \begin{itemize}
   \item i. License status disclosure requirements (handles, screennames, etc.)
   \item ii. Listing requirements as they relate to social media
   \item iii. Social media best practices
   \end{itemize}

\textbf{b. Third-Party Websites}
   \begin{itemize}
   \item i. Understanding “One Click Away”
   \item ii. Keeping information on third-party websites up to date and accurate
   \item iii. License status disclosure requirements on all websites or advertising forums
   \end{itemize}

\textsuperscript{11} [LINK TO ADVERTISING GUIDELINES FORTHCOMING]
APPENDIX I: COURSE CURRICULUM RESOURCE MATERIALS

a. Washington State Department of Licensing Real Estate Program Webpage:  

b. National Association of Realtors’® Federal Issues Tracker:  
   www.nar.realtor/political-advocacy/nars-federal-issues-tracker

c. Washington Legislature Webpage  
   http://leg.wa.gov/

d. Douglas v. Visser, 295 P.3d 800 – Wash: Court of Appeals, 1st Div. 2013:  
   https://casetext.com/case/douglas-v-visser-1 and other sources

   https://scholar.google.com/scholar_case?case=17184789156320884377&q=culcum+v.+heritage+house&hl=en&as_sdt=6,48&as_vis=1 and other sources.

   http://scholar.google.com/scholar_case?case=16934759942007581459&q=edmonds+v.+scott+real+estate&hl=en&as_sdt=6,48&as_vis=1 and other sources.

g. [ADVERTISING GUIDELINES FORTHCOMING]

h. Solar Guidance  
   i. Renewing license (webpage):  
      1. Uploading document instructions (PDF):  
   
   ii. Updating license (webpage):  
      2. Responding to a firm request/transfer your license to a new form/activate your license (video): https://youtu.be/pLUUl9xn688

   iii. Fingerprinting and background checks (webpage):  
      http://www.dol.wa.gov/business/fingerprinting.html