

WASHINGTON STATE DEPARTMENT OF LICENSING
REAL ESTATE PROGRAMS
EDUCATION UNIT

**2020/21 CURRENT
ISSUES IN WASHINGTON
COMMERCIAL REAL
ESTATE COURSE
CURRICULUM**

UPDATED: September 2019

DRAFT

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 2020/21 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- An identification of new key issues/trends and out-of-date content/topics based on stakeholder input via survey process conducted May 2019.

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 Hours²

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
 - iv. Link to qualified software for calculating deductions: <https://www.energy.gov/eere/buildings/qualified-software-calculating-commercial-building-tax-deductions>
- b. Qualified Opportunity Zones:** The [Qualified Opportunity Zone \("QOZ"\) program](#) was created by the 2017 Tax Cuts and Jobs Act to encourage economic growth in underserved communities through tax incentives for investors who utilize "Opportunity Funds" to invest in the Zones. Along with tax benefits, it presents opportunities for real estate investment and development in those communities. U.S states and territories, including Washington, D.C., nominated areas to be designated as QOZs in 2018, and the IRS and Treasury finalized the designations that year. The U.S. Treasury Department and the Internal Revenue Service are currently conducting notice-and-comment rulemaking to finalize regulations for the program. This is a temporary program, set to fully sunset on December 31, 2047.
- c.** There are multiple tax benefits available to investors who invest in a QOZ, if all the requirements are met. First, capital gains reinvested within 180 days into a QOZ are tax-free for up to nine years, through 2026. If that initial investment is held for five years, the tax ultimately paid on it is reduced by 10%; if held for seven years, it is reduced by 15%. In addition, gains accrued on deferred-gains funds while invested in a QOZ are tax-free if they are held for at least ten years. These investments must be processed through an "Opportunity Fund," which is a partnership or a corporation organized for the purpose of investing in QOZ property; these funds self-certified, and must hold at least 90% of their assets in QOZ property (which includes stock, partnership interests, and/or tangible property used in a trade or business in a QOZ, such as real estate).
- d. FHA Condominium Loan Policy:** Department of Housing and Urban Development announced late August 2019 the long-awaited arrival of new Federal Housing Administration condominium loan policies.

The new guidance extends certifications from two years to three, allows for single-unit

mortgage approvals, provides more flexibility with owner/occupancy ratios, and increases the allowable number of FHA loans in a single project. The rule will go into effect in mid-October.

- e. Cannabis banking: Under current federal law, cannabis is an illegal controlled substance, so federally-insured banks are barred from accepting funds from them, or risk violating anti-money laundering laws.

Educational Objective 2: Washington Legislative Issues

Identify and describe common concepts relating to Washington commercial real estate 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. **Hirst:** On January 19, 2018 SB 6091 passed, which was immediately signed into law by Governor Inslee. This legislation reversed the State Supreme Court's October 2016 *Hirst & Futurewise v. Whatcom County* water rights/Growth Management Act decision. Under SB 6091, local governments are no longer required to review new private wells for "impairment" of other water rights or state instream flows. In addition, the new law clarifies that local governments may rely on or refer to Department of Ecology's water resource regulations in order to comply with the Growth Management Act.
The Hirst legislation continues the trend that water supply requirements for building permits and subdivisions will vary by county and watershed. Under SB 6091, rules adopted by Ecology in certain basins will continue to govern water availability, while in other basins, water availability will be based on the statutory provisions of SB 6091.

The new law included an emergency clause, and so took effect immediately. Counties and cities are now in the process of implementing the new law, so brokers should get specific information from local governments. Real estate licensee should also be aware that whether water supply is available for a building permit or subdivision is a legal determination. Under the Real Estate Agency Law, RCW Chapter 18.86, brokers should advise their clients who need assistance to seek legal counsel or review by a qualified consultant.

Ecology recently issued a statewide summary of water availability requirements after the passage of SB 6091. Please see <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/6091%20SBA%20AWNP%2018.pdf> for further information on water availability provisions by watershed in Washington State.

- c. HB 1923: Creates a menu of local options for density, including affordable housing considerations
- d. SB 5581: Improving the effectiveness and adequacy of state tax laws by clarifying and simplifying nexus provisions, by decreasing compliance and administrative burdens for taxpayers and the department of revenue, by facilitating the collection of new tax revenue resulting from the United States supreme court's decision in South Dakota v. Wayfair, Inc., by providing more consistent tax obligations for both domestic and foreign sellers, and by simplifying the expiration of sales tax sourcing mitigation payments to local governments on September 30, 2019.
- e. SB 5284, SB 6462, HB 1011 Real Estate Disclosures. Seller disclosure requirements for improved and unimproved residential properties were amended to require disclosures regarding smoke detection devices, oil tank insurance, and proximity to a working forest.
- f. **Landlord Tenant Law Update**
 - Update on HB 1440, timely notice for rent increases
 - Update on SB 5600, timely notice for economic evictions (rent payment)
 - Update on HB 1462, timely notice for building demolition, major rehabilitation or change in building's use.

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.³ Additionally, describe how and where to file a complaint against a licensee⁴, as well as how and where to view disciplinary actions against licensees.⁵

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

a. Dual Agency in Commercial Transactions

- i. Understanding the difference between dual agency and single-broker transactions
 1. Tenants' and buyers' choices
 2. Impact of dual agency and single-broker transactions on commissions and price and rate
 3. Creating a dual agency relationship through disclosure, and, separately entering an agency agreement with both the seller and the buyer
- ii. Complying with statutory requirements for disclosure

b. 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:

a. Seller disclosure versus caveat emptor (Douglas v. Visser, 295 P.3d 800 – Wash: Court of Appeals, 1st Div. 2013)

- 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

³ The following sub-objectives have been identified as consumer-driven complaints/investigations/findings received/initiated/issued by DOL Real Estate Programs Regulatory & Enforcement Unit.

⁴ <http://www.dol.wa.gov/business/realestate/complaint.html>

⁵ <http://www.dol.wa.gov/business/disciplinary/disciplinaryrealest.html>

- b. Scope of broker's obligation to convey offer to client is limited (*Beauregard v. Riley*, 9 Wn. App. 2d 248, 443 P.3d 827 – Washington Court of Appeals 2019)**
 - i. Broker's duty under RCW 18.86.030(1)(c) to convey all written offers pertains only to services offered or rendered for which compensation is offered or there is an expectation of compensation.
 - ii. Brokers taking a listing for sale need not present offer to lease.

- 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)⁶**
 - 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
 - iv. Court of Appeals provides direction with regard to what is required drafting and addendum or amendment to purchase agreements and what is required to meet the standard of care of an attorney as required by Heritage House.

Educational Objective 3: Competition in Commercial Brokerage

- a.** The U.S. Department of Justice is investigating issue pertaining to commissions and compensation of real estate brokers
 - i. Potential antitrust violations
 - ii. Transparency and candor regarding compensation and negotiability are key
 - iii. Consumers uninformed
- b.** Class action antitrust lawsuits filed on the residential side

⁶Instructors 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.⁷

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

- a. Working in a team environment and advertising the team name.**
 - i. Licensing requirements
 - 1. Firm assumed names as they relate to the industry term “team”
 - 2. DOL does not license or recognize teams as a legal entity within a firm.
 - ii. Responsibilities of designated brokers and firms
 - 1. Delegation of responsibility to managing brokers who supervise the real estate brokerage activities of other brokers or managing brokers
 - iii. Supervision
 - 1. Licensed assistants: *These terms become very confusing within the industry. You are either licensed or you are not. However, whether someone is licensed or not the firm/DB is still responsible for their conduct.*
 - 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 contractors
- c. Broker Personal Safety**
 - i. Safety systems/plans
 - 1. Showing safety for sellers
 - 2. Open house/model homes
 - 3. Vacant properties
 - 4. Listing appointments

⁷ <http://www.dol.wa.gov/business/realestate/brokersrenew.html>,

<http://www.dol.wa.gov/business/realestate/brokersupdate.html>

d. DOL Online Renewal and License Maintenance Features

- i. Online renewal
 - 1. DOL will soon no longer accept paper renewals
 - 2. Ensuring continuing education is complete at renewal
 - 3. Finger printing through Identigo
- ii. Using your dashboard
 - 1. Updating information
 - 2. Online transfer process
 - a. Notifying your firm of separation

*Note this process will change with the implementation of the new licensing system in the Spring of 2020.

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. Brokerage/Signatures/Guarantees/Exhibits
- c. Commercial Property Management**
- i. Differences from residential property
 - ii. Responsibilities
 - 1. Conventional
 - 2. Specialized
 - ii. 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. 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. 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)⁸
 - ii. Referring customers to flood insurance agents for flood insurance and *ensuring* not to be the source of rate information

⁸<https://www.fema.gov/national-flood-insurance-program>

d. 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

e. 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

f. Implications of Multi-State Transactions

- i. Resources available to ensure compliance with other jurisdictions' license laws when working outside the State of Washington

Educational Objective 4: Real Estate Advertising

Identify and describe common concepts relating to emerging real estate advertising techniques. 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.

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

a. Licensing Law Requirements and Social Media

- i. License status disclosure requirements (handles, screennames, etc.)
- ii. Listing requirements as they relate to social media
- iii. Social media best practices

b. Third-Party Websites

- i. Understanding "One Click Away"
- ii. Keeping information on third-party websites up to date and accurate
- iii. License status disclosure requirements on all websites or advertising forums

APPENDIX I: COURSE CURRICULUM RESOURCE MATERIALS

- a. Washington State Department of Licensing Real Estate Program Webpage:
<http://www.dol.wa.gov/business/realestate/index.html>
- 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
- e. *Beauregard v. Riley*, 9 Wn. App. 2d 248, 443 P.3d 827 – Washington Court of Appeals 2019:
https://scholar.google.com/scholar_case?case=17965512967828937175&q=beauregard+v.+riley&hl=en&as_sdt=6,48&as_vis=1
- f. Edmonds v. John L. Scott Real Estate, 942 P. 2d 1072 – Wash: Court of Appeals, 1st Div. 1997:
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:
 - i. Advertising: Real Estate
<https://www.dol.wa.gov/business/realestate/advertising.html>
 - ii. Washington State Real Estate Advertising Guidelines
<https://www.dol.wa.gov/business/realestate/docs/620400.pdf>
- h. Solar Guidance:
 - i. Renewing license
(webpage): <http://www.dol.wa.gov/business/realestate/brokersrenew.html>
 - 1. Uploading document instructions
(PDF): <http://www.dol.wa.gov/business/docs/uploading-document-instructions.pdf>
 - ii. Updating license
(webpage): <http://www.dol.wa.gov/business/realestate/brokersupdate.html>
 - 1. Separating from a firm/inactivate license (video): <https://youtu.be/yTdegMkU5O4>
 - 2. Responding to a firm request/transfer your license to a new firm/activate your license
(video): <https://youtu.be/pLUU19xn688>
 - iii. Fingerprinting and background checks
(webpage): <http://www.dol.wa.gov/business/fingerprinting.html>