

**CHELAN DOUGLAS REGIONAL PORT AUTHORITY  
POLICY FOR PAYING COMMISSIONS TO REAL ESTATE BROKERS  
REPRESENTING LESSEES OR PURCHASERS OF THE PORT  
AUTHORITY'S PROPERTIES**

**PURPOSE**

The Board of Directors of the Chelan Douglas Regional Port Authority ("Port Authority"), recognizing that timely development of the Port Authority's real property is essential to achieving sustainability, economic development, and regional community enhancement goals, and that real estate brokers (a "Broker") possess unique and specialized skills and relationships and that the Port Authority's cooperation with all Brokers will foster more industrial and commercial development of the Port Authority's real property, desire to establish a clear and concise policy to encourage the Brokers to earning of Commission by Brokers who are not initially engaged by the Port Authority.

**POLICY**

- (1) **Definitions.** The following terms apply to this Policy:
- (a) "Broker" has the same meaning set out in RCW 18.85.011;
  - (b) "Prospect" means a person or entity who has an interest in real property owned/managed by the Port Authority;
  - (c) "Prospect/Broker Agreement" means an agreement between a Prospect and a Broker where the Broker is engaged by a Prospect to obtain an interest in real property on behalf of the Prospect, for a fee;
  - (d) "Real Estate Transaction" means a sale or lease of a parcel of the Port Authority's real property;
  - (e) "Commission" means a fee paid by the Port Authority to a Broker pursuant to this Policy.
  - (f) "Substantial Discussions" means substantive discussions between the Port Authority and a Broker pointing toward a specific Real Estate Transaction. Substantial Discussions does not include inquiries of the availability of Port Authority real estate and/or the initial potential terms of a Real Estate Transaction.
- (2) **Conditions Precedent to the Payment of a Commission.** For a Broker to receive a Commission for Real Estate Transactions from the Port Authority, the following conditions must be satisfied:

- (a) It is the sole discretion of a Prospect as to whether or not a Broker is representing them, as evidenced by an executed Prospect/Broker Agreement provided to the Port Authority; provided that, if a Prospect has not been in contact with the Broker for a period of six months, a valid Prospect/Broker Agreement is deemed to not exist. It is then the sole discretion of the Prospect to determine whether they wish to be represented by the Broker, with a new written agreement provided to the Port Authority.
  - (b) The Broker is licensed under RCW 18.85, and is in good standing with the State of Washington.
  - (c) The Broker represents a Prospect pursuant to a written Prospect/Broker Agreement prior to the Broker initiating communications with the Port Authority on behalf of the Prospect.
  - (d) The Broker is not affiliated with the Prospect. A Broker is considered affiliated with the Prospect when it is (1) either an officer, director, general partner, member, managing member, joint venture, 10% or greater shareholder of the Prospect; or (2) directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Prospect.
  - (e) The Broker maintained an active and continuing role in Substantial Discussions resulting in a Real Estate Transaction;
  - (f) Prior to Substantial Discussions the Broker and Prospect shall have executed an agreement with the Port Authority for the payment of a Commission pursuant to this Policy, and releasing the Port Authority from all claims, actions, causes of action or proceeding, administrative or judicial against the Port Authority, its Commissioners, employees and contractors except for the payment of the Commission authorized pursuant to this Policy.
  - (g) If multiple Brokers are involved with a Prospect the Port Authority will only negotiate one Commission. The Brokers and Prospect must present the Port Authority with a written agreement indicating the exact division of the Commission prior to the Commission being paid.
- (3) **Commission Amount and Payment.** The Port Authority's Chief Executive Officer shall negotiate the Commission based on, but not limited to, the following factors: the dollar size of the transaction; the due diligence period; the length of time to close; and the financial terms.
- (a) **Leases of Port real estate.** Commissions for leases of Port Authority real estate shall not exceed 5% of the total of the lease payments for the first five

years of the lease, excluding leasehold excise tax, triple net charges, tenant improvements and common use fees. Commissions shall be paid within thirty 30 days after the lease is fully executed and all contingencies have expired which would allow the Lessee to terminate the lease. Commissions for short term leases (5 years or less) will be paid at a rate not to exceed 5% of the total lease payments collected for the term of the lease, excluding leasehold excise tax, triple net charges, tenant improvements and common use fees.

- (b) Sales of Port real estate. For the sale of Port real estate, the Commission shall not exceed five percent (5%) and shall be paid at closing.
- (4) Termination of Prospect/Broker Agreement. Upon a Prospect advising the Port Authority, in writing, the Prospect has terminated the Prospect/Broker Agreement, any agreement by the Port Authority to pay a Commission shall terminate.
- (5) Chief Executive Officer's Authority. Pursuant to the Port Authority Board of Director's current Policy on the Delegation of Authority, the Port Authority's Chief Executive Officer may enter into an agreement for the Port Authority's payment of a Commission in any amount not exceeding the then current authorized financial limits of the Delegation of Authority Policy.
- (6) Binding Effect. Nothing in this Policy confers a right to any party to receive a Commission upon a transaction of the Port Authority's real estate without complying with the terms of this Policy and executing an agreement for the payment of a Commission by the Port Authority pursuant to this Policy.
- (7) Limitations. Commissions will not be paid on leases or sales involving existing Port Authority tenants or real estate transactions where the Port Authority has already engaged a Prospect in Substantial Discussions.

This Policy shall take effect immediately upon passage by the Board of Directors.

Adopted by the Chelan Douglas Regional Port Authority Board of Directors

on September 10<sup>th</sup>, 2019.