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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

ALEXANDRIA PARRY,

Plaintiff,

vs.

WINDERMERE REAL  
ESTATE/EAST, INC., a  
Washington corporation,

Defendant

NO. \_\_\_\_\_

COMPLAINT FOR DAMAGES FOR  
BREACH OF FIDUCIARY DUTY  
AND FOR VIOLATION OF  
RCW 19.86.020

Plaintiff alleges:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Alexandria Parry is a resident of King County, Washington
2. Defendant Windermere Real Estate/East, Inc. (“Windermere”) is a corporation organized under the laws of the state of Washington, doing business as a licensed real estate agent in King County, Washington, with a principal place of business at 3176 NE Sunset Boulevard, Renton, Washington 98056.
3. All acts and omissions alleged herein occurred in King County, Washington.

COMPLAINT FOR DAMAGES FOR BREACH OF  
FIDUCIARY DUTY AND FOR VIOLATION OF  
RCW19.86.020 - 1

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2 **STATEMENT OF FACTS**

3 4. On January 16, 1995, plaintiff executed a purchase and sale agreement for the  
4 purchase of a residence located at 7618 S. Langton Road in Seattle. She was  
5 represented by Marcie Maxwell, an associate broker employed by defendant  
6 Windermere.

7 5. At the time that plaintiff executed the purchase and sale agreement, she was  
8 provided with a disclosure form (PSMLA Form No. 17) which had been completed  
9 by the seller, indicating that the residence was condemned “prior to 1979” due to a  
10 failure of the septic system but that there had been no further problem following the  
11 installation of a large interceptor trench. The disclosure form also indicated that the  
12 septic system, including the drainfield, was located entirely within the property  
13 upon which the residence was located.

14 6. The purchase and sale agreement provided that the septic tank serving the property  
15 would be “inspected by King County prior to closing and at seller’s expense”.

16 7. Plaintiff’s purchase of the residence closed on or about February 20, 1995. She never  
17 received confirmation that the septic system had been inspected by the County, as  
18 provided in the purchase and sale agreement.

19 8. Plaintiff began noticing offensive odors emanating from the ground surrounding  
20 her home in the spring of 1995.

21 9. In July, 1997, plaintiff hired a septic tank contractor to pump the septic tank and  
22 evaluate its condition. She was informed that the existing system could not be  
23 repaired.

1 10. Plaintiff commissioned a proposed design for a replacement septic system, but the  
2 proposed design was rejected by the Seattle-King County Department of Public  
3 Health on August 25<sup>th</sup>, 1997. According to the notice of rejection, “[g]iven the site  
4 constraints of the steep slope, the reported natural springs and the limited area for a  
5 ‘repair’, it is not possible for a system to meet current code requirements.”

6 11. Meanwhile, in the process of investigating the matter with the Department of  
7 Health, plaintiff discovered that an inspection of the septic system had been  
8 performed by the County on December 13, 1994—a full month prior to her offer to  
9 purchase the residence. The inspection report revealed that:

- 10 a. There appeared to be inadequate “reserve area”, or portion of the property  
11 suitable for installation of a replacement drain field;
- 12 b. The seepage pit associated with the septic system drainfield might be  
13 encroaching on a neighboring property;
- 14 c. Because seepage pits are no longer acceptable methods of sewage disposal in  
15 King County, a conforming repair might not be possible in the event of a  
16 system failure; and
- 17 d. At least three properties within a two block radius of the residence had  
18 experienced failures of similar septic systems between 1981 and 1988.

19 12. At the time that the County inspection report was completed in December 1994, a  
20 copy was provided to the previous owner of the residence. On information and  
21 belief, additional copies of the report were provided to the seller’s real estate agent,  
22 to plaintiff’s lender, and to defendant Windermere.

1 13. Despite defendant Windermere's notice of the County inspection and report, and  
2 despite defendant's actual possession of a copy of that report, plaintiff never received  
3 a copy from defendant.

4 14. Because of the failing septic tank system, plaintiff must now bear the expense of  
5 having the septic tank serviced, on average, once every other month. The value of  
6 her residence is severely diminished, and she has been informed that her home may  
7 be declared unfit for habitation.

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9 **FIRST CAUSE OF ACTION—BREACH OF FIDUCIARY DUTY**

10 15. Plaintiff realleges and hereby incorporates by reference paragraphs 1 through 14,  
11 above.

12 16. As plaintiff's agent, defendant had a fiduciary duty to take whatever actions may  
13 reasonably have been necessary to assure that plaintiff was provided with the septic  
14 system report produced by the County.

15 17. Defendant failed to take the actions reasonably necessary to assure that plaintiff was  
16 provided with a copy of the County's report, or was otherwise informed of its  
17 contents.

18 18. Plaintiff sustained damage as a proximate result of defendant's failure to fulfill its  
19 fiduciary duty.

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21 **SECOND CAUSE OF ACTION—VIOLATION OF RCW 19.86.020**

22 19. Plaintiff realleges and hereby incorporates by reference paragraphs 1 through 18,  
23 above.

1 20. Defendant's failure to take reasonable steps as necessary to assure that plaintiff was  
2 aware of the defective septic system, in light of defendant's actual knowledge of such  
3 defects, constitutes an unfair or deceptive act or practice in trade or commerce, as  
4 prohibited by RCW 19.86.020.

5 21. Defendant's unfair and deceptive practice impacts the public interest, in that there  
6 is a likelihood that additional plaintiffs have been or will be injured in exactly the  
7 same fashion.

8 22. Plaintiff sustained damages as a proximate result of defendant's unfair and deceptive  
9 practices.

10  
11 **PRAYER FOR RELIEF**

12 Now therefore, plaintiff Alexandria Parry requests that the court enter judgment  
13 against defendant Windermere as follows:

- 14 1. An award of actual damages in the amount of one hundred thousand dollars  
15 (\$100,000.00) or such amount as may be proved at trial;  
16 2. An award of exemplary damages as provided by RCW 19.86.090;  
17 3. An award of reasonable costs and attorneys' fees; and  
18 4. Any additional or further relief which the court finds just and equitable.

19  
20 Dated this \_\_\_\_ day of July, 1998.

21  
22 Rod M<sup>c</sup>Carvel, Attorney for Plaintiff  
23 WSBA No. 26136  
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25 Seattle, Washington 98107  
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27 **COMPLAINT FOR DAMAGES FOR BREACH OF**  
28 **FIDUCIARY DUTY AND FOR VIOLATION OF**  
**RCW19.86.020 - 5**

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