

LOWRY SCHOOL OF REAL ESTATE

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KANSAS BROKER LAW **COURSE**

INTRODUCTION : The objective of this course is to provide new broker applicants for the state of Kansas with current information dealing with Kansas real estate license law. It is for educational purposes only and neither Lowry School of Real Estate nor the instructors shall be held accountable for errors in the preparation of the materials or the presentation. Please do not construe any part of this document as legal advice. For specific advice, prior to taking any action, consult with an expert, attorney, accountant, etc. of your choice.

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DUTIES AND POWERS OF THE KANSAS REAL ESTATE COMMISSION

The Kansas Real Estate Brokers and Salespersons license act was enacted by the Kansas Legislature and is interpreted by the Kansas Attorney General. The attorney general also acts as attorney for the commission in all actions and proceedings brought by or against the commission or pursuant to any of the provisions of this act. The act is referred to as BRRETA - Brokers relationship in real estate transaction act. It is important that you study this material and understand the license law. Each state is different and you must follow the rules in order to be in compliance with the law and not be subject to fine or loss of your real estate license.

The Kansas Real estate Commission consists of 5 members appointed by the governor. Each serves a 4-year term. One commissioner drops off each year. One commissioner is appointed from each of the 4 Kansas congressional districts and one at large. Applicants must be a Kansas citizen and resident for the past 5 years. A minimum of three (3) must have been brokers for at least five 5 years. At least one (1) must be a member of the public not licensed before or during their term. The commission members select their own chairperson. The commissioners employ a director to run the real estate commission office. The Director is responsible for keeping records, calling meetings when requested by two or more members, and certifies records to court. The director does **not** vote.

The duties of the KREC include the following things:

1. Make investigations.
2. Issue rules and regulations.
3. Hold hearings.
4. Ask the district court for injunction to stop people from selling without a license or to enforce its orders on licensees.
5. Hold or assist in holding real estate courses and instructor workshops.
6. Issue licenses.
7. Publish lists of licensees.
8. Publish disciplinary actions.
9. Revoke, suspend, restrict licenses or censure licensees.
10. Assess fine for violations.
11. Publicize the existence of the recovery revolving fund and details of act.

The KREC **may not** impose criminal penalties or arbitrate commission disputes between licensees.

The KREC Office will be in Topeka. All KREC Records are open to public inspection. You must make an appointment to go to the KREC office. It is only open to visitors by appointment.

Reasons for suspension or revocation of a license:

The KREC can suspend, revoke, restrict your license or you may be censured if you:

- a. Violate any of the obligations listed in the real estate license act
- b. Fraudulently obtained your license. (made a false statement on your application)
- c. Plead guilty or no contest or are convicted of a felony

- d. If you're found guilty of "fair housing" violations.
- e. Have been judged to be mentally disabled by a court
- f. Fail to account for and remit others money or property to them
- g. Demonstrate that you are incompetent
- h. "Equity skimming" - buying redemption rights on properties in foreclosure; collecting rent and then not making payments on the loan (NOTE: If licensee does purchase property or redemption rights, they MUST notify mortgage holder within 20 days after purchase of their purchase.)

If the KREC does suspend or revoke a license they are required to give the licensee the reasons for the suspension or revocation.

HEARING PROCEDURE/PENALTY FOR VIOLATION

1. The complaint must be filed within 3 years from when the act was committed.
2. There can be an emergency proceedings hearing if a licensee's escrow account is found to be unsound or if the licensee is convicted of a felony.
3. Cost of hearing
 - a. Will be paid for by licensee if the KREC rules against you or it can also be assessed against the applicant if the KREC finds against the applicant.
 - b. Examples of costs:
 1. Fees/mileage for witnesses
 2. Reports or stenographic charges
 3. Audit fees, surveys, appraisals, etc.
 4. Other charges authorized to be taxed as costs as specified by license law.
4. Penalties for violating license law
 - a. Penalties by the KREC
 1. A fine of not less than \$100 or more than \$1000, and a prison time of up to 12 months or both for the first offense. The second and subsequent offenses can be a prison time of 12 months and a fine for not less than \$1,000 or more than \$10,000.
 2. Suspend your license (for a definite period of time)
 3. Revoke your license
 4. Censure you
 5. Restrict your license
 - a. When?
 1. Licensee has violated the law; or
 2. Person applies for license but does not meet all requirements. This could be the case when a broker applicant doesn't have the required experience.
 - b. Can be restricted to:
 1. Term
 2. A particular broker
 3. Specific type transaction
 4. Other conditions determined by the KREC

- c. The KREC may require a person with a restricted licensee to be bonded
 - d. Restricted licenses are not automatically renewed
 - b. Penalties by court:
 - 1. Violation of this law is a misdemeanor
 - 2. First violation - up to 12 months imprisonment, a fine or both.
 - 3. Second and subsequent violations - up to 12 months imprisonment plus a fine
- NOTE: The KREC doesn't have to report license law violations for criminal prosecution but can.
5. APPEALS PROCESS
- a. If licensee is aggrieved by order of the KREC (suspension, revocation, etc.) the licensee may appeal to the court for judicial review.
 - b. If the KREC revokes a broker's license and that broker's name is included in the trade or business name, then the KREC may deny continued use of the name unless a stay of the KREC order is issued by the court.
6. REFUSAL OF LICENSE:
- The KREC can refuse to issue you a license for the following reasons:
- a. If you had a license suspended or revoked.
 - b. You have already done something that could get your license revoked.
 - c. You plead "guilty" or "no contest" or were convicted of a felony.
 - d. You have sold real estate without a license (illegally) earlier.
 - e. You lied on your license application.
 - f. Other matters deemed pertinent by the KREC.

NOTE: The KREC, when considering the above, may consider extenuating circumstances, length of time and rehabilitation by the applicant. The KREC must give you the reason(s) for the refusal. You may request a hearing before the KREC. NOTE: Failure to pass the exam is **NOT** a valid reason for a hearing.

Non resident licensees must be licensed in their home state. Salespeople must associate with a broker Licensed in Kansas, meet the same qualifications as Kansas resident licensees and designate the Director of the KREC as agent to accept all legal notices for you by signing the form called "Statement of Irrevocable consent". Non resident licensees have the same hearing rights as Kansas residents **except** that if your license is revoked or suspended in your home state it **automatically** revokes or suspends your Kansas license (no hearing). You cannot hold a license in Kansas as a broker if you're a salesperson in your home state. You also can't get a license in Kansas if you're not licensed in your home state. If you are a salesperson in your home state you will also be a salesperson in KS.

TYPES OF LICENSES:

- 1. **BROKER** – each office must have its own broker. A broker may have multiple licenses (more than one office.) A license can only be issued to a person; no license can be issued to a corporation, partnership, etc. Only issued to an individual.
- 2. **SALESPERSON**
 - a. Performs all acts as a licensee under their broker's supervision.

- b. Can NOT hold licenses of others.

THE LICENSE:

Qualifications for license for Kansas residents (Brokers or Salesperson) must file an application with the KREC. The application can be done electronically. All licensees have to be 18 years old or older and have a high school diploma or its equivalency.

Pass the state and national parts of state exam within **six (6) months prior to application**. Applicants applying by requirements met in another state may have the national portion of the test waived. (This means you take the state portion of the test.)

- a. Attend 30-hour pre-license course within one (1) year prior to application. (salespersons “Principles of Real Estate”; brokers “Real Estate Fundamentals”). Effective 1/1/2020 an additional 30-hour management course will be required for **all** broker applicants, within 6 months prior to the application date.
 - b. Salespeople must complete the 30-hour practice course within 6 months prior to application date. (This includes new licensees and licensees getting their licenses by requirements met from another state.)
 - c. All applicants for a new license must have a background check completed at the applicant’s expense within 6 months of the application date. This means you must be fingerprinted on FBI approved cards. Then you will send the cards and waiver letter available on the KREC web site to be processed.
 - d. In lieu of the 30-hour Real Estate Fundamentals course, Broker applicants by requirements met from another state must complete the 4- hour Kansas law course within 6 months prior to application. (Similar to reciprocity.) Effective 1/1/2020, a 30-hour management course is also required. Broker applicants will be required to show the experience required.
 - e. Must be honest, trustworthy, have integrity and competence.
- 1. Additional qualifications.
 - a. Salesperson: must be recommended by their sponsoring broker.
 - b. Broker: Must have been active and show proof that they have been active in real estate sales (in any state) at least two (2) of the past three (3) years. (The KREC may consider equivalent experience or education.)
 - c. The broker applicant must show they have the required number of points to be approved. The point system requirement can be viewed on the KREC web site.
 - 2. License Fees:

<u>Type of license:</u>	<u>License fee 2 years:</u>	<u>Application fee:</u>
Salesperson	\$125.00	\$15.00
Broker	\$175.00	\$50.00

Transfer fee or fee to reactivate is \$15.
 - 3. A licensee shall notify the KREC in writing of any change in company name, company address or supervising broker within 5 days on the company change form on the KREC web site. Any change in personal name, address or email address should be changed on the licensee’s personal contact information page on the KREC website.
 - 4. A licensee can put their license on inactive status. (See inactive license below.)

TRANSFER OF LICENSE/INACTIVE LICENSE/REPORTING OF INFORMATION

1. TRANSFER OF LICENSE

a. You may associate with another broker at any time during the period for which your license was issued. NOTE: You must have your new broker consent to the affiliation as part of the online transfer process.

b. If your broker fires you due to a law violation, the broker is required to tell the KREC in writing the reason. Include a copy of the court papers/report.

d. The transfer fee is \$15.

2. INACTIVE LICENSE.

a. You may deactivate your license upon request. (No fee required)

b. It will be held by the KREC. You are no longer licensed with your broker and you can't do any real estate business until you reactivate your license.

c. You do not need continuing education hours while inactive.

d. You cannot sell for others while inactive but you are required to renew the license or it will expire.

e. If you stay inactive over 2 years, there will be penalty hours of 6 hours per year for all years inactive. If you stay inactive over 5 years, you have to take the examination over and take the required number of continuing education hours (6 per year you were inactive).

NOTE: The fee to reactivate is \$15.00.

ACTIVITIES REQUIRING A REAL ESTATE LICENSE:

If you do any of the following for compensation, offer to do, or negotiate to:

1. Sell

2. Exchange

3. Purchase

4. Lease commercial property. (Kansas does not require a real estate license to do residential rentals/property management.)

5. List

6. Auction or assist an auctioneer by catching bids

7. Deal in options

8. Get prospects

9. Charge advance listing fees including:

a. Money paid in advance for advertising, etc. Does not include magazines, newspapers, etc. when inquiries are made directly to owner or broker. If a licensee gets advance fees, they must give a written breakdown every 30 days to the consumer paying the fee, showing where the money was spent.

10. Provide lists of real estate for sale or lease.

REAL ESTATE INCLUDES:

a. Freehold estates (ownership of real property with unpredictable duration)

b. Non-freehold estates (leasehold)

c. Corporeal estates (tangible)

d. Incorporeal estates (intangible)

e. Condominiums (apartment or commercial unit)

PERSONS EXEMPT FROM LICENSURE REQUIREMENTS:

- a. Anyone selling or dealing with their own property.
 - b. Someone acting under a power of attorney, they can't receive compensation for it.
 - c. A licensed attorney performing **attorney duties**.
 - d. Person **acting under courts authority** such as a receiver, a trustee, an administrator, an executor, guardian.
 - e. Government officers or employees performing government duties.
 - f. MLS owned by brokers or a not for profit association
 - g. A referral system owned by brokers or non-profit association.
 - h. Railroads; public utilities
 - i. Oil & gas leases; mineral interests.
 - j. Employees selling corporate property as long as they own at least **5% of the corporate stock**.
 - k. Builders selling their own properties. (Anyone selling property for builders must own at least 5% of the business or must be licensed.)
 - l. Agricultural leasing. Agricultural real estate/farms are considered residential real estate in Kansas.
5. Expiration of license.
- a. Renewal dates 2 years from the date you get the license. If you are a salesperson and get a broker license it will be for 2 years as it is a new license. Check the KREC web page for more information: <https://www.krec.ks.gov/>
 - b. Must file renewal form and have continuing education classes completed by the expiration date. You can late renew your license within six (6) months after expiration by paying the \$100 late fee, renewal fee and filing the necessary form as required by the KREC. Active licenses are late renewed to the company they were with at the time of expiration without the broker's signature. The late addendum only needs a broker's signature if the licensee is changing from inactive to active status with the renewal.
 - c. 12 hours continuing education hours are required for all renewals. Salespeople and brokers are required to take the Required Salesperson and Broker core course for a minimum of 3 hours and Broker's are required to have an additional broker core course for a minimum of 3 hours. The balance of the 12 hours can be any courses approved by the KREC. Certificates for courses not provided by a KREC approved provider can be submitted to the KREC with the appropriate form to request credit from the KREC for those courses for elective credit at a cost of \$10 per course/certificate. <https://www.krec.ks.gov/> RE-800 in the forms tab.
1. Reporting of information to the KREC (**within ten (10) days in writing**) the following:
- a. Licensees are required to report within 10 days of any settlement from real estate litigation filed against the licensee or any real estate company owned in whole or part by the licensee. Provide circumstances and a copy of the settlement agreement.
 - b. Any arrest, indictment or conviction, plea of guilty or nolo contendere to any misdemeanor or felony.
 - c. Any change of personal name, address or email address.

- d. Report any denial, suspension, revocation, voluntary surrender, or any other disciplinary action taken by KS or another state against any professional or occupational license or certificate you hold.
- e. Any change regarding your trust account.

PLACE OF BUSINESS:

1. Each broker must have an office (unless on inactive status with the KREC)
 - a. Resident brokers office must be in Kansas (or adjoining state with approval of the KREC)
 - b. Non resident broker's office may be in their home state or Kansas with KREC permission.
2. Licenses are no longer sent when renewed. In lieu of posting licenses of all company licensees you can print a list from the KREC site of all licensees. Go to: www.krec.ks.gov and choose "Verify a Company."
3. Upon change of company name or address, the broker must notify the KREC in writing within 5 days.
4. Trade names
 - a. Register name and obtain approval from the KREC.
 - b. Brokers name must be posted somewhere in the office in a conspicuous place.
5. Office itself
 - a. Can be in your home (NOTE: No sign is required outside your office.)
 - b. You must have enough office space to maintain records and allow audits.

RECORD KEEPING: All records relating to a broker's real estate business have to be kept in the broker's files for three years and are subject to audit by the KREC. The files should contain legible copies of all documents and correspondence relating to the transaction. Following is a list of the items required. This is for all files whether PENDING, CLOSED OR CANCELED.

Any and all of the following records if applicable to the transaction:

1. Agency agreement with seller
2. Agency agreement with buyer
3. Transaction broker addendum
4. Transaction brokerage agreement
5. Offers, counter offers
6. Contracts
7. Lot reservation agreement
8. Commercial lease
9. Option
10. Receipt for purchase agreement and earnest money
11. Closing statements
12. Authorization to disburse earnest money on transaction which did not close
13. Any other record generated in connection with the transaction

TRUST ACCOUNT RECORDS:

A complete record of all monies received or escrowed on real estate transactions must be maintained:

1. Deposit slips showing transaction number, date of deposit, amount and where deposited

2. Monthly trust account bank statement, canceled checks and deposit slips
3. A check register which shows the chronological sequence in which funds are received and disbursed
4. For funds received: date of deposit, transaction number, amount
5. For disbursement: date, transaction number, payee, amount & the current balance
6. A ledger for each transaction including: names of principals, property address, transaction number, amount, date of each deposit, check number, date of check, payee, amount of each disbursement, and the current balance.

You should also reconcile your trust account records monthly.

Step 1: How much money is in the trust account? Balance the bank statement.

Step 2: How much money should be in the trust account? Establish trust account liability

Step 3: Compare trust account liability to the reconciled bank balance. (Does the bank balance match trust account liability? If they don't match to the penny, find out WHY.) 86-3-18 (c):

State that trust account liability, as established by ledger sheet balances, shall be compared to the reconciled trust account balance monthly unless there has been no activity during the month.

Feel free to call the commission office if you have any questions or need assistance on proper maintenance of records. (KREC: 785-296-3411.)

TRANSACTION IDENTIFICATION NUMBERS (TIN): 86-3-22 is to be assigned and placed on all applicable records. The supervising broker on each real estate sales contract, option agreement, and lease agreement for which the broker acts as an employee of, or on behalf of, the owner, purchaser, lessor or lessee shall assign the TIN. If a separate trust account is maintained for a branch office, the branch broker shall assign the transaction number. Sales contracts and option agreements shall be numbered in consecutive order by contract date each calendar year with the last 2 digits of the year being first two digits designating the year. EXAMPLE: 12-1, 12-2, 12-3, etc. Lease agreements shall be numbered in consecutive order by contract date each calendar year with the first digits designating the year and preceded by the letter "L". Example: L12-1, L12-2, etc.

1. If a broker deposits earnest money in the broker's trust account prior to contract acceptance, the broker shall assign a transaction number to the offer. The date of the deposit shall be used as the contract date for the sole purpose of assigning numbers in consecutive order pursuant to subsection (b) of this regulation. If the offer subsequently becomes a contract, the transaction number assigned to the offer shall be used throughout the transaction.
2. The broker shall record the deposit on a ledger pursuant to K.A.R. 86-3-18(a) (5) with a notation on the ledger that the earnest money was deposited prior to contract acceptance. If the offer is rejected or withdrawn prior to contract acceptance, the broker shall return the earnest money to the prospective buyer and shall record the disbursement on the ledger sheet with a notation that the offer was rejected or withdrawn. If the offer is accepted, the broker shall note the contract acceptance date on the ledger. The transaction number shall be shown on the transaction file and shall be included on any of the following applicable records:
 - a. The trust account check register to identify funds deposited or disbursed;
 - b. Each trust account deposit slip with the amount of the deposit related to each transaction designated;

- c. Each check drawn on the trust account;
- d. Each transaction ledger.
- e. Each receipt from an escrow agent.
- f. If the broker's records are computerized, the transaction number shall be shown on any applicable computer sensitive record.
- g. The commission may approve a different transaction numbering system requested by a broker.

Upon acceptance of an offer and deposit of earnest money in a brokers trust account, such deposit may be disbursed only: 58-3061(g)

- 1 by written authorization of buyer and seller;
- 2 by a court order; or
- 3 when a transaction is closed according to the agreement of the parties.

In the event the broker is unable to get a signed release from both parties to the contract, Kansas license law permits the following procedure to be used providing that the following language is in the contract. This language is referred to as the "h" language. According to 58-3061 (h):

"Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and seller agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit with 30 days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto."

58-3061 (d): A broker is not entitled to any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated unless otherwise agreed in writing by all parties to the transaction.

58-3062 (a) (2): No licensee shall misappropriate moneys required to be deposited in a trust account or convert such moneys to licensee's personal use, or commingle the money or other property of the licensee's principal with the licensee's own money or property, except that nothing herein shall prohibit a broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account. The broker must keep enough of their own funds to maintain the account to avoid using money being held for others.

58-3062(a)(18): No licensee shall accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.

Finally under 58-3061 (i): The commission may direct a broker to remit moneys from the broker's trust account to the commission for deposit into the real estate recovery revolving fund established with the state treasury by K.S.A. 58-3023 and amendments thereto, upon the following determinations having been made by the commission:

- 1 That the money has been in the broker's trust account for five or more years;
- 2 If the money was an earnest money deposit, that an earnest money dispute existed, or the broker did not obtain written authorization of buyer and seller to disburse the funds; and

- 3 That the funds do not meet the criteria for payment to the state treasurer under the disposition of unclaimed property act.

Trust account exemption. To request exemption from the requirement to maintain a trust account provided by subsection (f) (D) of K.S.A. 58-3061 and amendments thereto, a broker shall complete a request form obtained from the commission. If a broker uses an escrow agent other than the broker, the escrow agent should be a person or entity that is insured or bonded, i.e. bank, title company, or attorney who maintains an escrow or trust account for the purpose of holding the funds of others. Also, be sure the escrow agent's account is insured for all funds deposited. FDIC is \$100,000. Do they have more than that on deposit? Are they insured for more than the FDIC amount? The third-party escrow agent shall be identified in all contracts or lot reservation agreements. A vast majority of brokers use a title or closing company as their escrow agents.

No broker shall fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the brokers files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

Immediately after closing make sure if you hold the earnest money in your own escrow account you transfer the funds which were deposited as earnest money and now belong to you, the broker, into your own account. Failure to do so will result in commingling. Some escrow agents will have you bring a check for the earnest money to closing and then disburse one check for all of the commission due you at closing. Salespersons are required to give the earnest money and contract to their broker right away.

MARKETING/ADVERTISING:

1. A licensee, whether acting as an agent or a principal, shall not intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.
2. All advertising, except on property which is not listed with a broker and which is personally owned by a licensee or in which a licensee may have an interest, shall include the name of the broker by using the broker's trade or business name and such other information as the broker considers necessary. The use of only a post office box number, telephone number or street address shall be deemed a violation of K.S.A. 58-3062(a)(1).
3. Unless property personally owned by a licensee or property in which a licensee may have an interest is listed with a broker, all advertising caused by the licensee on such property shall be done in such a manner as to clearly inform the public that a real estate broker, associate broker or salesperson is the owner of or has an interest in the property advertised.

4. A real estate broker who enters into an agreement which authorizes the broker to utilize the name or trade name of any other person in the conduct of the broker's real estate business shall file a copy of such agreement in the public records of the commission. The term "trade name" shall include, but not be limited to, trademark, service mark or trade identification. Failure to comply with this section shall be deemed a violation of K.S.A. 58-3086(g).
5. A broker shall not advertise or promote the broker's business in a manner that would confuse, hinder or mislead the public as to the identity of the broker responsible for the debts and liabilities of the business or entity.

BROKERAGE RELATIONSHIPS

The Brokerage Relationships in Real Estate Transactions Act is called BRRETA and became effective October 1, 1997.

DEFINITIONS

AFFILIATED LICENSEE is any individual licensed as a salesperson or broker under the Kansas Real Estate License Act who is employed by a broker or affiliated with a broker as an independent contractor.

AGENCY is every relationship in which a broker acts for or represents another person(s), by the latter's express **written** authority, in a real estate transaction. It also means the relationship in which a broker, by verbal authorization, acts for or represents any agency of the federal government in the sale of property owned by the federal agency. This does not mean county, city, or state government.

AGENCY AGREEMENT has to be a **written agreement** setting forth the terms and conditions of the relationship between a broker and the broker's client. **Remember that it MUST be in writing.**

BROKER means an individual who is licensed as a broker under the Kansas Real Estate Brokers and Salespersons License Act and who has an agency with a seller, buyer, landlord, or tenant. It can also be a corporation, partnership, association, or limited liability company. The officers and members or persons employed by or associated with the corporation, partnership, association or limited liability company, are licensed under the Kansas Real Estate Brokers' and Salespersons' License Act and which has an agency with a seller, buyer, landlord or tenant, or acts as a transaction broker. The term **broker** includes the broker's affiliated licensees except where the context would otherwise indicate. If an individual broker is indicated by the context, the term **broker**, means the supervising broker as defined by K.S.A. 58-3035.

BROKERAGE FIRM would be the business entity (real estate Company) of a broker.

BUYER'S AGENT means a broker who has a **written** agency agreement with a buyer. This includes the broker's affiliated licensees. All agreements are between the **broker** and the **client**. Salespeople and associate brokers are acting on behalf of the supervising broker and the agency agreements do not belong to them.

CLIENT means a seller, landlord, buyer, or tenant who has a **written** agency with a broker. When you list a property, you are signing an agency agreement with the seller. When you write a buyer agency agreement it is also a listing.

COMMISSION means the Kansas Real Estate Commission (KREC) and not the compensation a licensee makes.

CONFIDENTIAL INFORMATION is information made confidential by statute, rule, regulation, or instruction from the client or any other personal information about the client, which might place the other party at an advantage over the client.

CUSTOMER means a seller or buyer in a real estate transaction in which a broker (or any of their affiliates) is (are) involved but, who has (have) not entered into an agency with the broker. You are assumed to be working as a transaction broker until you enter into a written agreement.

DESIGNATED AGENT means a licensee affiliated with a broker who has been designated by the broker, or the broker's authorized representative, to act as the agent of a broker's buyer or seller client to the exclusion of all other affiliated licensees. This term sounds singular but is not necessarily so. You can have a team or any number of people/licensees working as the designated agent for a client. Then **they** become one entity.

LANDLORD'S AGENT means a broker who has entered into an agency agreement with a landlord. This includes the broker's affiliated licensees.

LICENSEE means any person licensed under Kansas Real Estate Brokers and Salespersons Act as a broker or salesperson.

MINISTERIAL ACTS are actions that a licensee may perform for a person that are informative in nature but don't rise to the level of active representation. Performing these activities does not make you an agent for a party. They may include but are not limited to:

- 1) Answer the telephone and questions concerning the availability and pricing of brokerage services.
- 2) Answer the telephone and questions about the price or location of property.
- 3) Answer questions about the property while attending an open house.
- 4) Set an appointment to view property.
- 5) Answer questions from office consumers walking in to your office, concerning brokerage services offered on particular properties.
- 6) Accompanying an appraiser, inspector, contractor or similar third party on a visit to a property.
- 7) Describing a property or property condition in response to inquiries.
- 8) Make a referral to another broker or to a service provider.

SELLER'S AGENT means a broker and any of his or her affiliates who have a **written** agency agreement with a seller.

QUALIFIED THIRD PARTY means a federal, state, or local governmental agency or any person whom the broker, or affiliated licensee or a party to the transaction, reasonably believes has the expertise to meet the industry standard of practice for the type of inspections or investigation being undertaken. It is always best to let the consumer or client pick who inspects for them.

STATUTORY AGENT means a seller's agent, buyer's agent, landlord's agent, tenant's agent, or designated agent in a real estate transaction. It does **NOT** mean a transaction broker.

SUB AGENT means a cooperating agent showing a property listed by a seller's agent is acting as a "sub" agent to the seller's agent making the cooperating agent an agent to the seller as well. This is not commonly offered because of the increased liability to the client (seller).

TENANT'S AGENT means a broker or any of his or affiliated licensees who has a written agency agreement with a prospective tenant.

TRANSACTION BROKER means a broker, or any of his or her affiliated licensees, who assists one or more parties with a real estate transaction without being an agent or advocate for the interest of any party to the transaction.

DUAL AGENCY IS PROHIBITED: A licensee shall **NOT** act as an undisclosed dual agent or in a dual capacity of agent and undisclosed principal in any transaction.

A broker can work with a single party in separate transactions, pursuant to a different relationship, including but not limited to the following. You can list and sell a seller's property as the seller's agent. You can then work with the same seller, as a buyer's agent in buying another property, provided there is a written agency agreement. If you don't have a buyer's agency agreement with the seller or buyer, you would be their transaction broker. A broker who has been working with a seller or buyer as a transaction broker may later act as an agent for any of the parties provided that a written agency agreement is established.

A broker may act as a transaction broker by either oral or written agreement. A written transaction broker agreement does **NOT** make you their agent. You would still be a transaction broker. A broker shall be considered to be a transaction broker unless:

- 1) A written agency relationship is established.
- 2) A broker works with a buyer or tenant as a subagent of the seller or landlord by accepting an offer of sub-agency from the listing agent. This would make you a seller's agent. **NOTE:** Most companies no longer offer sub-agency due to the liability.

Written agency agreements are required before providing representation for any of the following activities when acting on behalf of the consumer.

- 1) Sells, exchanges, purchases or leases real estate.
- 2) Offers to sell, exchange, purchase, or lease real estate.
- 3) Negotiates, offers, attempts, or agrees to list real estate for sale, lease, or exchange.
- 4) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange.
- 5) Auctions, offers, attempts, agrees to auction real estate or **assists an auctioneer by procuring (catching) bids** at a real estate auction.
- 6) Buys, sells, offers, to buy or sell or otherwise deals in options on real estate.
- 7) Assists or directs in procuring of prospects calculated to result in the sale, exchange, or lease of real estate.
- 8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange, or lease of real estate.
- 9) Engages in the business of charging an advance-listing fee.
- 10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.

All of the above are things you **can not** do as a representative of another person **without** a written agency agreement.

Only verbal authorization is required to represent agencies of the Federal Government. This does not mean city, county, state, or any other form of government, **only the Federal Government**. We do VA or HUD foreclosures as an agent of the seller without an agency agreement. All others must have an agency agreement.

To establish an agency relationship, a written agreement must be signed no later than the signing of an offer to purchase or lease. In other words, you may work with a consumer as a transaction broker for any period of time.

When they decide they want you to advise them or represent them, you must then act as their agent. This means you must have a written agency agreement with them. All agency agreements will set forth the terms and conditions of the relationship. They will include:

- 1) A fixed date of expiration (**not until sold**) and no automatic renewals or extensions.
- 2) Any limitation on the duty of confidentiality.
- 3) The terms of compensation.
- 4) Shall refer to the minimum requirements and obligations of an agent.

The broker or an affiliated licensee, with the broker's permission, and the client must sign the agency agreement. It is required by law that a copy of the agency agreement be given to the client at the time the client signs it. In the event the broker does not sign the agency agreement at the same time the client signs it, a copy shall be provided to the client within a reasonable time. A broker can authorize agents working under their license to sign agency agreements.

All agency agreements with sellers and buyers shall include the potential for the broker to act as a transaction broker, or designated agent, as follows:

- 1) For the seller's agent or buyer's agent to act as a transaction broker;
- 2) For an affiliated licensee to act as a designated agent for the other party and for the designated agent's supervising or branch broker and an affiliated licensee if applicable, to act as a transaction broker; or
- 3) For the broker to designate an affiliated licensee to act as the designated agent for the seller or buyer on the broker's personal listing.

A licensee may not sign or initial any document on behalf of a client without duly authorized power of attorney. This must be a separate instrument. An agency agreement shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's client in a real estate transaction or authorization for the broker to act as attorney-in-fact for the client.

PROHIBITED ACTS:

Threats & Harassment – (Prohibited Acts - see K.S.A. 58-3062(e) below)

- (e) No licensee shall:
 - (1) Threaten to engage in or engage in physical abuse or engage in harassment towards:
 - (A) A client or customer or a former client or customer;
 - (B) another licensee;
 - (C) commission members or staff;
 - (D) staff of the office of administrative hearings;
 - (E) staff from any real estate trade association or multiple listing service; or
 - (F) any person from another business or industry whose services are requested or required as part of a real estate transaction;
 - (2) threaten to file or file a lien on residential property;
 - (3) conduct real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances;
 - (4) be finally adjudicated by a federal or state agency and found to be guilty of a violation of a federal or state law regulating the real estate industry or regulating a closely related industry whose licensees or members are commonly involved in real estate matters;
 - (5) be finally adjudicated by a federal or state agency and found to be guilty of a violation of a federal or state law prohibiting discrimination against any client or customer on the basis of color, race, gender, religion, national origin, age, disability or familial status; or
 - (6) intentionally misappropriate or misuse any personal property or real property of a client or customer.

NET listings are prohibited: An agency agreement with a seller shall not provide that the compensation is based on the difference between the gross sales price and the net proceeds to the owner.

Agency agreements may not be sold, assigned, or transferred without the express written consent of all parties, i.e., the broker, customers and clients.

Solicitation of an agency agreement from a seller or buyer knowing that another agent has an exclusive right to sell or exclusive right to buy agency agreement is prohibited.

Inducement to break an agency agreement is prohibited. A licensee shall not induce or try to get any party to break an agency agreement.

A licensee may not contact or initiate negotiations with a buyer knowing that another broker has an agency agreement or written transaction broker agreement granting an exclusive brokerage relationship with the buyer. If a licensee knows that a buyer has an agreement with another broker the licensee shall not contact the buyer and shall not initiate negotiations for the sale, exchange, or lease of real estate with the buyer. You should ask a buyer if they have signed an agreement with another broker to be sure. If they have not, a licensee may negotiate a sale, exchange, or lease directly with a buyer providing that a consent agreement is signed prior to such negotiation. The informed consent may be evidenced by a consent agreement signed by the buyer or tenant prior to any such direct negotiation. The consent agreement will acknowledge the buyer or tenant agency agreement and that the buyer or tenant may be liable for compensation under the terms of the agency agreement. **NOTE:** All licensees are required to use the consent agreement form adopted by KREC. Click here for the form:

[Buyer's or Tenant's consent to direct negotiation](#)

An agent will not fail to inform a buyer at the time an offer is written, that certain costs must be paid, total cost to close and give them an approximate amount of their monthly payment. An agent working with a seller will inform the seller at the time an offer is presented what their closing costs will be giving them an estimated net amount they will receive at closing. This means you will have to find out what the seller owes on the property and subtract that figure along with all other costs to sell prior to asking them to consider an offer.

A licensee is prohibited to negotiate directly with a seller or landlord knowing that another agent has an exclusive listing on the property. A buyer's agent may present an offer directly to a seller providing the seller's agent is present and the seller gives their permission. This is not a legal right. The law permits a buyer's agent to present the offer if the seller's agent is present and it is often the practice to do so. **The final decision is the sellers.** It is not the seller agent's decision.

Termination of Relationships: Agency begins at the time the client engages the broker (signs the agency agreement) and continues until:

- 1) Closing according to the agreement of the parties.
- 2) Date of expiration of the listing agreement, buyer or seller.
- 3) As otherwise provided by law. (Any authorized termination)

Obligations that continue after closing: Except as otherwise agreed in writing, a broker owes no further duties to the client after termination, expiration, or closing of a transaction according to the agreement of the parties,

except:

- 1) To account for all money and property relating to the engagement.
- 2) To keep confidential all information received during the course of the engagement that was made confidential by request of any party unless:
 - a) The party permits disclosure by subsequent word or conduct.
 - b) Such disclosure is required by statute (law).
 - c) The information becomes public from a source other than the broker.

A relationship between a transaction broker and a seller or buyer shall terminate when:

- 1) A transaction is closed according to the agreement of the parties.

- 2) If a transaction is not closed according to the agreement of the parties, the earlier of:
 - a) Date of expiration;
 - b) Any authorized termination of the relationship.

Obligations which continue after closing: Except as otherwise agreed in writing, a transaction broker owes no further duties to any party to the transaction after termination, expiration, or closing of the transaction according to the agreement of the parties except:

- 1) To account for all money and property relating to the transaction, and
- 2) To keep confidential all information received during the course of the engagement which was made confidential by request of any party unless:
 - a) The party permits disclosure by subsequent word or conduct; Such disclosure is required by law or
 - b) The information becomes public from a source other than the transaction broker

COMPENSATION is presumed to come from the transaction. Payment of compensation by itself does not establish an agency relationship. An agency relationship can only be created by a written agency agreement between the parties. A broker may be compensated by the seller, landlord, buyer, or tenant. A broker may be compensated by more than one party if the parties consent in writing. Make it a part of the purchase agreement. Make everyone aware.

A broker may pay and share brokerage and referral fees. A broker may:

- 1) Pay a commission or compensation to any licensee affiliated with the broker for performing services under this act;
- 2) With the written agreement of the seller or landlord, buyer, or tenant, share a commission with another broker who acted as a transaction broker, a subagent, or an agent of the other party; and
- 3) Pay a referral fee to a person who is licensed as a broker in Kansas or another state, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

MINIMUM REQUIREMENTS OF SELLER'S OR LANDLORD'S AGENT

A seller's agent or a landlord's agent shall be a statutory agent with the following duties and obligations:

- 1) Perform the terms of the agreement.
- 2) Present all **written** offers in a timely manner, unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller. Make sure and give them an estimated net to them upon closing.
- 3) Disclose all adverse material facts actually known by the licensee.
- 4) Advise the client to obtain expert advice on material matters known to but beyond the expertise of the licensee.
- 5) Account for all money and property received.
- 6) Comply with this act and its rules and regulations.
- 7) Comply with any applicable federal and state laws (including fair housing).

No cause of action for any person shall arise against a licensee who recommends that the client obtain expert advice about material matters known to, but beyond the expertise of the licensee.

A seller's or landlord's agent shall not disclose any confidential information about the client unless failure to do so would violate the law. No cause of action for any person shall arise against a licensee acting as a seller's

or landlord's agent for making any required or permitted disclosure. No duty or obligation is owed to a customer (the buyer) except to disclose adverse material facts known to the agent including but not limited to:

- 1) Any environmental hazards affecting the property that are required by law to be disclosed.
- 2) The physical condition of the property.
- 3) Any material defects in the property.
- 4) Any material defects in the title to the property.
- 5) Any material limitation on the client's ability to perform under the terms of the contract.

No duty is owed to conduct an independent property inspection or to verify information on behalf of a customer or to verify accuracy and completeness of a third-party inspection. A licensee has no requirement to disclose information about physical condition of the property if a qualified third party written report has been provided.

You must disclose known facts, which contradict a qualified third-party inspection.

STANDARD OF CARE

When investigating, inspecting, or disclosing, a licensee must exercise the degree of care expected of a reasonably prudent real estate professional. You may assist a customer by performing ministerial acts. A seller's agent may show and list properties not owned by the seller client without breaching any duty or obligation to the client.

A seller or landlord may authorize the broker to:

- 1) Offer sub-agency and pay compensation to other brokers.
- 2) Cooperate and share commissions with a buyer or tenant's agent.
- 3) Cooperate and share commissions with a transaction broker.

If the seller or landlord has authorized the broker to cooperate with other brokers, the listing broker cannot refuse to cooperate unless specifically instructed by the seller in writing.

A copy of seller's written instructions will be provided to another licensee upon request.

A seller's or landlord's agent shall not be liable for damages for failure to perform prescribed duties except for willful, wanton conduct, fraud, or malice.

MINIMUM REQUIREMENTS OF BUYER'S OR TENANT'S AGENT

Duties and obligations of a buyer's or tenant's agent:

- 1) Perform the terms of the written agreement made with the client.
- 2) Promote the interests of the client with the utmost good faith, loyalty, and fidelity. This includes: Presenting all offers to and from the client in a timely manner when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract. Give them an estimated cost to buy with any offer you write for them. Disclose all adverse material facts actually known by the licensee. Advise the client to obtain expert advice on material matters known to but beyond the expertise of the licensee. Account for all money and property received. Comply with this act and its rules and regulations. Comply with any applicable federal and state laws (including fair housing).

No cause of action for any person shall arise against a licensee who recommends that the client obtain expert advice about material matters known to but beyond the expertise of the licensee.

A buyer's or tenant's agent shall not disclose any confidential information about the client unless failure to do so would violate the law. A buyer's or tenant's agent owes no duty to a customer (seller) except to disclose

adverse material facts actually known by the licensee concerning, but not limited to the buyer's financial ability to perform.

The licensee has no duty to conduct an independent investigation of a client's financial condition for the benefit of the customer (seller). If you know your client can not perform because of a financial problem, you must disclose it. The licensee has no duty to verify independently accuracy or completeness of statements made by the client or a qualified third party.

The licensee has no requirement to disclose the physical condition of the property providing an inspection was made by a qualified third party and a written report is provided to the client or customer. A licensee must disclose, to a client or customer, facts actually known, which were omitted from or contradict a report prepared by a qualified third party.

Standard of care: When investigating, inspecting, or disclosing, the licensee must exercise the degree of care expected of a reasonably prudent real estate professional. A buyer's or tenant's agent may assist a customer by performing ministerial acts. A buyer's or tenant's agent may show the same property to and provide assistance to competing buyers and tenants without breaching any duty or obligation to the client.

A buyer or tenant may agree in writing to their agent receiving compensation from a sellers or landlord's agent or from a transaction broker. A buyer's or tenant's agent will not be held liable for damages for failure to perform required duties unless the licensee acted with willful or wanton conduct or with fraud or malice.

TRANSACTION BROKER: OBLIGATIONS OF DISCLOSURE OF INFORMATION

A transaction broker is **not an agent** for either party. This means you cannot have a sub-agent or be a sub-agent.

Obligations and responsibilities: Perform the terms of any agreement, written, or oral. Remember you are assumed to be a transaction broker and can be a transaction broker by verbal agreement. Exercise reasonable skill and care. Present all offers and counter offers in a timely manner. Advise the parties regarding the transaction and suggest that the parties obtain expert advice as to material matters known to but beyond the expertise of the transaction broker. Account for all money and property in a timely manner. Keep the parties fully informed.

Assist the parties in complying with the terms and conditions of the contract and in closing the transaction. Disclose all adverse material facts actually known by the transaction broker to all prospective buyers or tenants, including but not limited to:

- 1) Any environmental hazards affecting the property.
- 2) Physical condition of the property
- 3) Any material defects in the property
- 4) Material defects in the title to the property; or
- 5) Any material limitation on the seller's ability to perform the terms of the contract.

The transaction broker must disclose all adverse material facts actually known to the transaction broker to any prospective seller or landlord including but not limited to material facts concerning the buyer's financial ability to perform the terms of the transaction. He or she must comply with all requirements of BRRETA and its rules and regulations. He or she must comply with federal, state and local laws, including fair housing and civil rights,

A transaction broker is not required to disclose information about the physical condition of the property if a written third-party inspection report has been obtained and provided to the party. A transaction broker must disclose any facts actually known by the transaction broker that were omitted from or contradict a written third-party report.

Providing the transaction broker advised the parties to obtain expert advice as to material matters beyond the transaction broker's expertise, no cause of action for any person shall arise against the transaction broker pertaining to such material matters.

Information which may not be disclosed without the consent of all parties:

- 1) That a buyer is willing to pay more than the purchase price offered for the property.
- 2) That a seller is willing to accept less than the asking price of the property.
- 3) What the motivating factors are for any party buying, selling, or leasing the property.
- 4) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered.
- 5) Or any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

A transaction broker has no duty to conduct an independent inspection of the property or to verify independently the accuracy or completeness of statements made by any parties. The transaction broker has no duty to conduct an independent investigation of a buyer's or tenant's financial condition.

Things which a transaction broker may do without breaching any obligation or responsibility:

- 1) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant.
- 2) List competing properties for sale or lease.
- 3) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants and
- 4) Serve as a single agent or subagent for the same or for different parties in other real estate transactions.

NO IMPUTATION OF INFORMATION

A client or customer shall not be liable for misrepresentation or omission by the client's agent or the transaction broker arising out of the agreement unless the client or customer knew of the misrepresentation or omission. (This is called no vicarious liability.) An agent or transaction broker shall not be liable for a misrepresentation or omission by the client or customer arising out of the agency or transaction broker agreement unless the licensee knew of the misrepresentation or omission.

An agent or transaction broker shall not be liable for an innocent or negligent misrepresentation for information provided to the seller, landlord, buyer, or tenant if the licensee does not have personal knowledge of the error, inaccuracy, or omission that is the basis of the claim of misrepresentation. Note: Imputation of knowledge means that a licensee is presumed to have knowledge because of the licensee's position. A transaction broker may cooperate with and compensate other brokers but shall not engage subagents. Why, because you are not an agent for the party.

Commercial transaction exception: Information, which may be disclosed in commercial transactions unless, prohibited by the parties is the following:

- 1) That a buyer or tenant is willing to pay more than the purchase price offered for the property.
- 2) That a seller or landlord is willing to accept less than the asking price for the property.
- 3) What the motivating factors are for any customer buying, selling, or leasing the property,
- 4) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered.

Information that may not be disclosed in commercial transactions: You may not disclose any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party, unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

Note: Agricultural land is not included in this commercial transaction exception. Agricultural land is considered a residential transaction so the law governing a transaction broker in a residential transaction must be followed.

BROKERAGE FIRM ACTING AS A TRANSACTION BROKER-AFFILIATED LICENSEES- DESIGNATED AGENTS-RULES & REGULATIONS.

A brokerage firm may act as a transaction broker on an **in-company** transaction if no designated agent has been appointed. (You listed the property as a seller's agent and listed the buyer as a buyer's agent without designated agency.) With the informed consent of the seller client and the buyer client you can become a transaction broker for both parties. Informed consent shall be evidenced by a transaction broker addendum to the buyer and seller agency agreements. This consent form shall be signed by the buyer prior to writing the purchase agreement and by the seller **prior to** presentation of the purchase agreement. If you do not have designated agents appointed even though you have a different agent working with the buyer and seller clients, you would have to do the form.

A broker may authorize an affiliated licensee to act as a legally designated agent of a buyer or seller client to the exclusion of all other affiliated licensees. In the event the brokerage firm has a property listed as designated agent for the seller, and a client of the same designated agent wishes to make an offer to purchase the property, then with the informed consent of both seller and buyer client, evidenced by a TBA form, the agent can act as a transaction broker for both buyer and seller. This applies to agricultural and commercial property as well as residential. The link for the form follows. Remember, using this form is for one seller, one buyer and does not change your status on this client relationship except for this one particular property. [Transaction Broker agreement](#)

The TBA form must be signed **by the buyer prior to writing the purchase agreement** and **by the seller prior to presenting the offer**. Each form shall be for one specific buyer, one specific seller and be an addendum to the listing agreements, not an addendum to the purchase agreement. If this buyer and seller don't make a deal, you are agent for the parties as before. One thing you must remember, the TBA form is promulgated by the KREC. This means this is the form you use. Don't make up your own. If you have designated agency, one agent can be a designated agent for the seller, a different agent can be designated agent for the buyer, and the broker then would be the transaction broker. The two agents would not have to change their status.

Duties of a seller's designated agent: The duties of a designated agent for the seller are the same as the duties of an agent for the seller discussed under the section Minimum Requirements of a Seller's Agent. The difference is that the designated agent is designated to the exclusion of all other agents with their firm. Other agents can be a designated agent or transaction broker for the other party in the transaction.

Duties of a buyer's designated agent: The duties of a designated agent for the buyer are the same as an agent for the buyer discussed under the section Minimum Requirements of a Buyer's Agent. Again, the agent would be designated to the exclusion of all other agents with their firm.

Unless excepted by law the supervising broker of the designated agent in any transaction involving a designated agent shall act as a transaction broker unless:

- 1) Both buyer and seller are represented by designated agents, and
- 2) The designated agents are supervised by the same branch broker.
- 3) In the above case, the branch broker shall act as the transaction broker.
- 4) The supervising broker or branch broker, if applicable, may appoint an affiliated licensee to act in the transaction as a transaction broker. This does not relieve the broker of being a transaction broker.

A designated agent may disclose confidential information of a client to the designated agent's supervising broker and to an affiliated licensee appointed as a transaction broker for the purpose of seeking advice or assistance.

Remember the following:

- 1) Advance consent to act as a transaction broker may not be given in an agency agreement with either a seller or buyer. Each addendum must be signed by each party and it must be specific to each transaction.
- 2) A licensee may show property to an unrepresented buyer as a transaction broker until the licensee shows an **in-company** listing to the unrepresented buyer. At this point, if the listing is as a seller's agent, the licensee must act as a seller's agent unless another licensee is a designated agent for the seller.
- 3) Because of the above, brokers may choose to establish a policy in which listing agents (seller's agents) are designated agents of the seller. If this policy is established a licensee in an **in-company** transaction may show a buyer prospect as a transaction broker.
- 4) In this situation the licensee also has the choice, with the broker's authorization and the buyer's consent, of entering into a buyer agency contract and representing the buyer as a designated buyer's agent.
- 5) The TBA form is not a part of the contract. It amends the listing agreement(s).

On the next page you will see the real Estate Brokerage Relationships brochure. It is required by the KREC that you present this to prospective buyers and sellers at the first face to face meeting. The consumer has the right to make an informed decision on if or how they want to work with you. This form makes it clearer for them. You should not just hand it to them. Explain it to them. A good foundation is the best way to have a smooth transaction. The form is below or here is a link to the form for printing: [Brokerage relationships form](#)

Real Estate Brokerage Relationships

Kansas law requires real estate licensees to provide the following information about brokerage relationships to prospective sellers and buyers at the first practical opportunity. This brochure is provided for informational purposes and does not create an obligation to use the broker's services.

Types of Brokerage Relationships: A real estate licensee may work with a buyer or seller as a seller's agent, buyer's agent or transaction broker. The disclosure of the brokerage relationship between all licensees involved and the seller and buyer must be included in any contract for sale and in any lot reservation agreement.

Seller's Agent: The seller's agent represents the seller only, so the buyer may be either unrepresented or represented by another agent. In order to function as a seller's agent, the broker must enter into a written agreement to represent the seller. Under a seller agency agreement, all licensees at the brokerage are seller's agents unless a designated agent is named in the agreement. If a designated agent is named, only the designated agent has the duties of a seller's agent and the supervising broker of the designated agent functions as a transaction broker.

Buyer's Agent: The buyer's agent represents the buyer only, so the seller may be either unrepresented or represented by another agent. In order to function as a buyer's agent, the broker must enter into a written agreement to represent the buyer. Under a buyer agency agreement, all licensees at the brokerage are buyer's agents unless a designated agent is named in the agreement. If a designated agent is named, only the designated agent has the duties of a buyer's agent and the supervising broker of the designated agent functions as a transaction broker.

A Transaction Broker is not an agent for either party and does not advocate the interests of either party. A transaction brokerage agreement can be written or verbal.

Duties and Obligations: Agents and transaction brokers have duties and obligations under K.S.A. 58-30,106, 58-30,107, and 58-30,113, and amendments thereto. A summary of those duties are:

An Agent, either seller's agent or buyer's agent, is responsible for performing the following duties:

- promoting the interests of the client with the utmost good faith, loyalty, and fidelity
- protecting the client's confidences, unless disclosure is required
- presenting all offers in a timely manner
- advising the client to obtain expert advice
- accounting for all money and property received
- disclosing to the client all adverse material facts actually known by the agent
- disclosing to the other party all adverse material facts actually known by the agent

The transaction broker is responsible for performing the following duties:

- protecting the confidences of both parties
- exercising reasonable skill and care
- presenting all offers in a timely manner
- advising the parties regarding the transaction
- suggesting that the parties obtain expert advice
- accounting for all money and property received
- keeping the parties fully informed
- assisting the parties in closing the transaction
- disclosing to the parties all adverse material facts actually known by the transaction broker

Agents and Transaction Brokers have no duty to:

- conduct an independent inspection of the property for the benefit of any party
- conduct an independent investigation of the buyer's financial condition
- Independently verify the accuracy or completeness of statements made by the seller, buyer, or any qualified third party.

General Information: Each real estate office has a supervising broker or branch broker who is responsible for the office and the affiliated licensees assigned to the office. Below are the names of the licensee providing this brochure, the supervising/branch broker, and the real estate company.

Licensee - _____ Real estate company name approved by the commission

Supervising/branch broker _____ Buyer/Seller Acknowledgement (not required)

Approved by the Kansas Real Estate Commission on October 10, 2017

Supervising Broker Best Practices. This information covers Confidential, Security, and the Personal Information Protection Act (Requirements Governing Activities - Maintaining Records). This guide and information has been prepared by real estate regulators to assist a broker who is considering owning and/or operating a real estate brokerage, as this endeavor comes with much responsibility and liability. Prior planning and research coupled with developing a policy and procedure manual will assist the broker in succeeding in the business, as well as reducing future problems and liability that can be costly to the organization. Managing individuals, both licensed and unlicensed, can be challenging and there is no guide or manual that has all of the answers; however, the real estate broker must always look to the local jurisdiction's laws and rules that provide guidance and require standards of licensed activity. There is a lot of very good information in this guide. Please read it in its entirety. Link below.

Click here: [Supervising Broker Best Practices](#)

Commercial real estate, sharing commissions with a person licensed in another state/jurisdiction –
(Requirements governing activities of licensees - see K.S.A. 58-3077 below)

58-3077. Commercial real estate. Sharing commissions with unlicensed persons, when authorized.

(a) As used in this section:

- (1) "Commercial real estate" means any real estate for which the present use is other than (A) one to four residential units or (B) for agricultural purposes.
- (2) "Foreign licensee" means a real estate licensee, in good standing of another state or country.
- (3) Words and phrases used in this section have the meanings ascribed thereto in K.S.A. 58-3035, and amendments thereto.

(b) A branch broker or supervising broker may cooperate with and share commissions or other compensation for services related to commercial real estate with a foreign licensee and such foreign licensee shall be permitted to perform services requiring a license under K.S.A. 58- 3034 et seq., and amendments thereto, with respect to commercial real estate in this state even though such foreign licensee is not licensed thereunder if:

- (1) The real estate is not improved with a single-family residence; and
- (2) the foreign licensee agrees to cooperate with a branch broker or supervising broker of this state in any commercial real estate transaction, as evidenced by execution of and compliance with a broker cooperation agreement which shall include, but not be limited to, provisions requiring:
 - (A) The foreign licensee to comply with all applicable laws and regulations of this state;
 - (B) the foreign licensee to submit to the jurisdiction of the courts of this state, the jurisdiction of the Kansas real estate commission and the applicability of the laws and regulations of this state for the conduct of the foreign licensee with respect to commercial real estate and any and all claims related thereto;
 - (C) the foreign licensee to give its written irrevocable written consent to service of process upon such foreign licensee by valid service upon the secretary of state of this state and upon the secretary of state of the state or province of the foreign licensee's real estate licensure;
 - (D) all escrow funds, including but not limited to, earnest deposits and security deposits, concerning the commercial real estate to be held in this state either in the trust account of a Kansas-licensed branch broker or supervising broker or by a third-party escrow agent located in this state;
 - (E) a description of how any and all compensation earned on any commercial real estate transaction shall be shared between the foreign licensee and the branch broker or supervising broker of this state;
 - (F) the foreign licensee and the branch broker or supervising broker of this state to agree to each keep the other informed of all showings and negotiations for commercial real estate;

(G) the foreign licensee and the branch broker or supervising broker of this state to agree to furnish to the other copies of all documents related to any commercial real estate transaction required by Kansas law to be retained, including but not limited to, agency disclosure, offers, counter-offers, purchase and sale contracts, leases and closing statements.

(c) A copy of any broker cooperation agreement shall be provided to the commission within five business days of the execution thereof.

(d) The provisions of this section shall be a part of and supplemental to the Kansas real estate brokers' and salespersons' license act.

(L. 2004, ch. 67, § 2; L. 2006, ch. 159, § 3; July 1.)

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