

Brokerage Management & Supervision

By Kathy McCarty

when you have to teach yourself a subject
because your teacher is useless



Yes or No?

1. Personal Income Tax must be filed (for both Kansas and Missouri) based on the address of the property sold.

2. A licensee's change of address must be submitted to the KREC within 15 business days.

4. Affiliated licensees have 10 days per KREC rules to submit transaction documents to the supervising broker. (from the date of execution of the doc.)

Yes or No?

5. Kansas licenses expire every 2 years, but the renewal date is 30 days before the actual expiration

6. A homeowner may post a sign stating “No Firearms Allowed.”

7. A licensee may refuse to work with a buyer who is carrying a rifle.

8. A license who wants to transfer from a brokerage must not contact any of their listed sellers about moving to the new company.

Yes or No?

9. If a licensee's buyer-client is lying about their loan qualification, the agent can not reveal this to the co-op because of the fiduciary rule to maintain confidentiality and the duty to follow the client's instructions.

10. Consider a selling broker who has affiliate licensees. This person may only take listings as a Seller's Agent, not as a Designated Agent.

Yes or No?

11. Are the following items okay per the Kansas regulations for a Transaction Broker?

- ▶ Exercising reasonable skill and care
- ▶ Presenting all offers in a timely manner
- ▶ Advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the licensee

Yes or No?

11. (Continued) Are the following items okay per the Kansas regulations for a Transaction Broker?

- ▶ Disclosing to the buyer all adverse material facts known by the transaction broker, including:
 - ▶ Environmental hazards affecting the property that are required to be disclosed unless it would adversely affect the seller's net proceeds.
 - ▶ The physical condition of the property
 - ▶ Any material defects in the property or in the title to the property
 - ▶ Any material limitation on the seller's ability to complete the contract
 - ▶ Disclosing to the seller all adverse material facts actually known to the transaction broker including material facts concerning the buyer's financial ability to perform the terms of the transaction.

Yes or No?

12. Pending transaction files are not part of a KREC audit.

13. A seller who is upset with an affiliated licensee may write a letter to the broker in order to thereby cancel the listing.

14. Earnest money must be deposited in 5 business days in Kansas. Missouri?

15. Gifts to a customer or client are allowable under the KS regulations.

Yes or No?

16. Background for questions 16 a,b,c,d

- ▶ *The Commission recently discussed K.S.A 58-3062 (c) which requires you supervise all licensees affiliated with your company, and K.S.A. 58-3060 (b)(3) which requires you supervise your office and its activities. Even though we live in a world of teams and independent contractors, brokers should take extra care that licensees under your supervision understand that you are the broker and you have a statutory responsibility to supervise. Otherwise, if a licensee violates the license law, discipline may also be taken against you as the broker for failure to properly supervise.*

Yes or No?

- ▶ 16 a. Assigning a ‘transaction file supervisor’ is the safest way to ensure rules and regulations are being met.
- ▶ 16 b. If an affiliated licensee wants to purchase their own listing the supervising broker should establish the correct procedure for that office.
- ▶ 16 c. BPOs done by an affiliated licensee can be done “on the side” without the broker’s involvement.
- ▶ 16 d. The money made by an affiliated licensee while handling property management can be totally outside the brokerage.



That's the
end of the
“Yes or No”
section.

Common Violations

The most common violations found are:

Failure to include brokerage relationships disclosure in the purchase contract

Failure to include radon gas disclosure or KBI offender registration in the contract

Missing/Incorrect escrow agent

Failure to obtain purchase agreement receipt and earnest money receipt from the third-party escrow agent and include it in the transaction file

Failure to disclose licensee's or immediate family member's interest

Failure to close transaction by the date specified in the contract

Agency Agreement- Common Violations

- ▶ No fixed expiration date
- ▶ Missing signature of client/customer and/or broker/affiliated licensee
- ▶ Document not in broker's file (missing or did not exist)

Full document from ARELLO at

<https://www.krec.ks.gov/docs/default-source/informational-documents/arello-supervising-broker-best-practices.pdf>

Personnel policies

Independent contractor agreement, compensation, dispute resolution, termination, performance reviews & establishing competency, office meetings, license renewals, Orientation for new licensees

Technology policies

Social networking language and a list of topics that avoid liability

Operations policies

Brokerage relationships, Sexual harassment and antidiscrimination, E&O requirements, document retention, earnest deposits

- ▶ To ensure maximum effectiveness, efficiency and safety, general standard procedures should be established for the office about how to properly: handle written and electronic correspondence, answer telephones, order supplies, meet schedules and deadlines, operate office equipment and arrange for repairs, and use company-owned vehicles.
- ▶ 3d. Staff Meetings

Office Policy Manual

Advertising and marketing policies

- Advertising submission and payment splits, Open house procedures,
- Social networking: brokerage identification, review of websites, Facebook, Twitter, etc.

Legal and ethics policies

- License transfers, dispute resolution, RESPA, Fair Housing,
- Personal Assistants (payments, responsibilities, limitations),
- Teams (supervision, systems, roles, agency roles)
- Cell phones (review your insurance)
- Code of Ethics: enforcement/complaints/training

Office Policy Manual

See KCRAR Broker Toolkit for Policy Manual Outline

Advertising Regulations

CHANGES TO ADVERTISING

An overview from the Kansas Real Estate Commission of advertising rules effective July 1, 2020

WHAT IS NEW?

No affiliated licensee may include a name or team name in advertising which:

- Uses the terms "realty," "brokerage," "company," or other terms that can be construed as a separate real estate company from their supervising broker's company.
- Is more than 2x greater in font size than the supervising broker's business name or trade name.
- Is not adjacent to the supervising broker's trade name or business name in any internet, website, social media or social networking advertisement.

All advertising shall:

- Not be confusing, misleading or inaccurate
- Be conducted with supervising broker approval
- Prominently and conspicuously include the supervising broker's trade or business name
- Include any other information considered necessary by the supervising broker

WHAT HAS NOT CHANGED?

WHAT IS ADVERTISING?

Advertising means communication in any form of media between a licensee or other entity acting on behalf of one or more licensees and consumers or the public, for any purpose related to licensed real estate activity.

Examples of Advertising

DOES THIS YARD SIGN COMPLY?

Yes.

The team name does not use terms that can be construed as a separate real estate company from their supervising broker's company;

And the team name is not 2x greater in font size than the supervising broker's business name.

Sunflower Team

Ad Astra Real Estate Company

555-555-5555



DOES THIS DIGITAL AD COMPLY?

Yes.

The team name, Sunflower Team, is adjacent to the supervising broker's business name, Ad Astra Real Estate, in this social media advertisement.

WHAT ARE MY RESOURCES?

- 1 Review **K.S.A. 58-3086** and **K.A.R. 86-3-7**
- 2 Ask your supervising broker
- 3 Consult an attorney



Does the yard sign comply?



No, for two reasons:

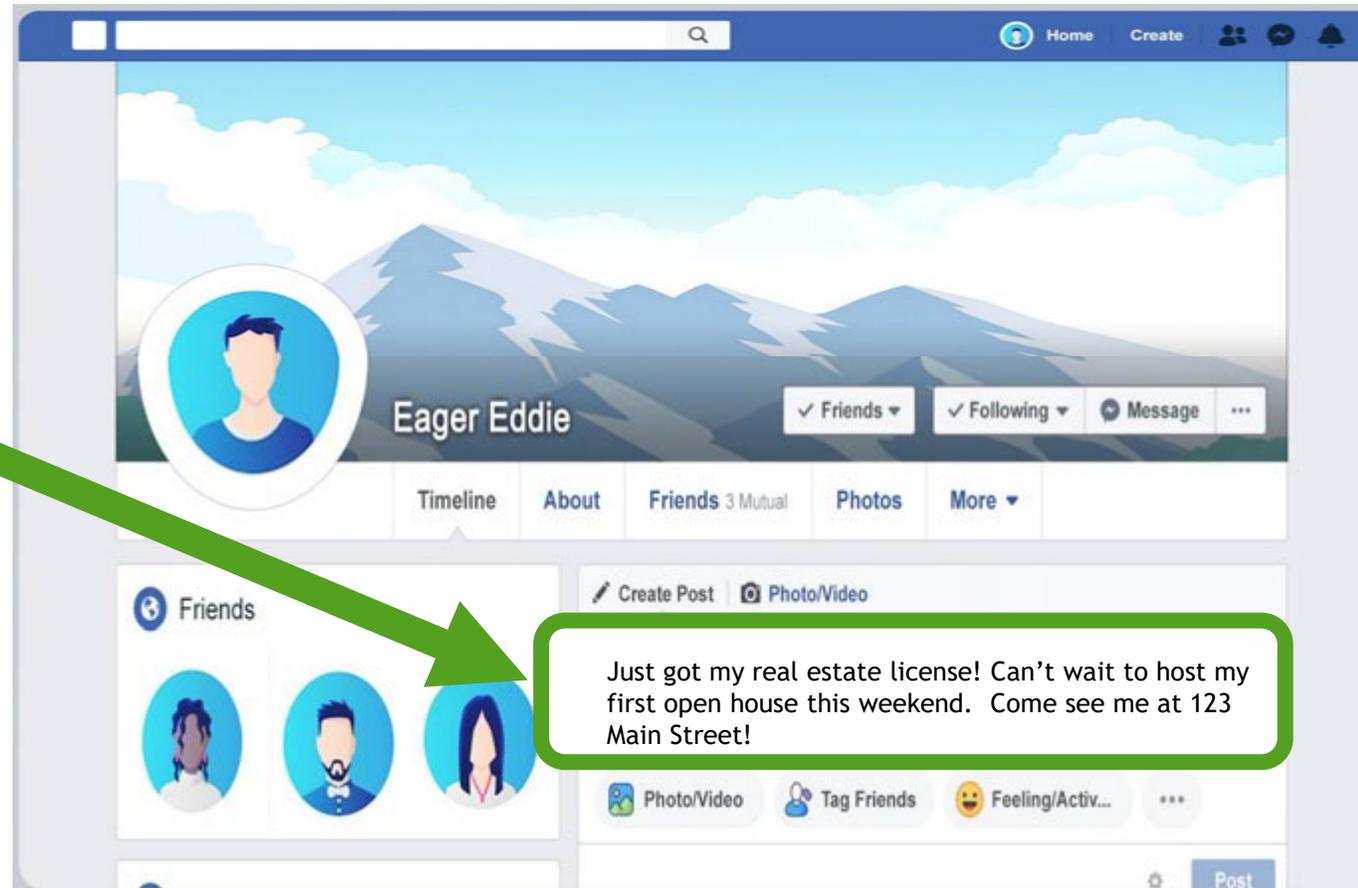
The team name includes “Realty”, which can be construed as a separate real estate company from the supervising broker’s company.

The team name is more than 50% larger than the supervising broker’s business name.

Is this advertising?

Yes.

This ad is **NON-COMPLIANT** because it does not prominently and conspicuously display the broker's trade name or business name



Full language
found in:

R.S.A. 38-300a
R.A.R. 86-3-7

RREC.KS.GOV



Advertising, continued



Missouri says:



Broker's regular business name or the name under which the broker or the broker's firm is licensed and shall indicate that the party advertising is a real estate broker and not a private party.



If the licensee's name or telephone number, or both, is used in any advertisement, the advertisement also shall include the name and telephone of the broker or firm who holds the licensee's license.

Filing Complaints with KREC

► COMPLAINTS

The Commission accepts complaints submitted online at <https://krec.ks.gov/compliance/complaints> or you may submit the Complaint form by mail or email. File size limitations may prevent receipt of emails with large attachments. The Commission can receive attachments up to 25MB. Complaints are not accepted over the phone.

Anonymous complaints are only investigated if the consuming public has been harmed in some way or if there is a significant threat of harm to the consuming public.

The Commission has authority to take disciplinary action against a licensee, including imposition of fines, suspending, revoking, restricting or conditioning of a license, continuing education or public censure.

► Investigations

Upon receipt of a complaint, the Commission will issue an acknowledgement letter confirming receipt and, if an investigation is opened, requesting any additional information which might be required for the investigation. Responses to the Commission's requests for information and documents should be made promptly.

The Commission is unable to provide information regarding the status of complaints or investigations. The investigation process can be lengthy and may take many months or years, depending on the nature and complexity of the matter.

Filing Complaints with MREC

How do I file a complaint? File a complaint by completing the form, which can be downloaded at <http://pr.mo.gov/boards/realestate/reccomplaintform.pdf>.

What documentation needs to be attached to the complaint? A complaint needs to include all documents that are pertinent and/or support the allegations of your complaint.

What is the complaint process? Once a completed complaint form has been submitted to our office, we send a letter to the subject(s) of your complaint, requesting that they respond within 30 days. Once a response is received, the documents are prepared for the Commission to review. The complaint will then be reviewed by the Commission at their bimonthly meeting to determine if the complaint warrants further investigation.

When will I be notified of the Commission's decision regarding my case? You will typically be notified within 10 business days after the bi-monthly Commission meeting.

What's Trending?



Communications training: with Co-op, Offers, Clients



Transaction Brokerage: When, How?



Safety



Underfunded HOAs

A Whopping 70% of Association-governed Communities are Underfunded



Thank you!