

KANSAS REQUIRED CORE

Instructor, Kathy McCarty

This course is approved for
Kansas Core CE credit and Missouri Elective
CE credit (3 hours each).

BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTIONS ACT (BRRETA)



Brokerage Relationships Disclosure

MISSOURI BROKER DISCLOSURE FORM



This disclosure is to enable you, a prospective buyer, seller, tenant or landlord of real estate, to make an informed choice BEFORE working with a real estate licensee.

Missouri law allows licensees to work for the interest of one or both of the parties to the transaction. The law also allows the licensee to work in a neutral position. How the licensee works depends on the type of brokerage service agreements involved. Since the sale or lease of real estate can involve several licensees it is important that you understand what options are available to you regarding representation and to understand the relationships among the parties to any transaction in which you are involved.

Missouri laws require that if you want representation, you must enter into a written agreement. This may or may not require you to pay a commission. You do not need to enter into a written agreement with a transaction broker unless you intend to compensate this licensee. These agreements vary and you may also want to consider an exclusive or nonexclusive type of relationship.

If you choose not to be represented by an agent, the licensee working with you may be working for the other party to the transaction.

CHOICES AVAILABLE TO YOU IN MISSOURI

Seller's or Landlord's Limited Agent

Duty to perform the terms of the written agreement made with the seller or landlord, *to exercise reasonable skill and care for the seller or landlord, and to promote the interests of the seller or landlord* with the utmost good faith, loyalty and fidelity in the sale, lease, or management of property.

Information given by the buyer/tenant to a licensee acting as a Seller's or Landlord's Limited Agent will be disclosed to the seller/landlord.

Buyer's or Tenant's Limited Agent

Duty to perform the terms of the written agreement made with the buyer or tenant, *to exercise reasonable skill and care for the buyer or tenant and to promote the interests of the buyer or tenant* with the utmost good faith, loyalty and fidelity in the purchase or lease of property.

Information given by the seller/landlord to a licensee acting as a Buyer's or Tenant's Limited Agent will be disclosed to the buyer/tenant.

Sub-Agent (Agent of the Agent)

Owes the same obligations and responsibilities as the Seller's or Landlord's Limited Agent, or Buyer's or Tenant's Limited Agent.

Disclosed Dual Agent

With the written consent of all parties, represents both the seller and the buyer or the landlord and the tenant.

A Disclosed Dual Agent may disclose any information to either party that the licensee gains that is material to the transaction.

A dual agent may not disclose information that is considered confidential, such as:

- Buyer/Tenant will pay more than the purchase price or lease rate
- Seller/Landlord will accept less than the asking price or lease rate
- Either party will agree to financing terms other than those offered
- Motivating factors for any person buying, selling or leasing the property

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 clients 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.



Kansas Brochure

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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






For discussion...

How should an agent
handle

- agency explanation
- agency agreements



What are the types of agency?

Buyer Agency

Seller Agency

Dual Agency (MO only)

Designated Agency

Transaction Brokerage

Other kinds of agency



Transaction Brokerage

- **Residential vs Commercial**
- Kansas
- Residential – can't share without permission
- Commercial – can share unless they tell us we can't



Commercial Brokerage Coop

- **There is a form for that!**
- Kansas
- Brokerage Cooperation Agreement
- Sharing commercial commissions with out of state brokers



What constitutes as Commercial Real Estate?

Five or more multi-family residential units on the same lot



What the heck is a foreign licensee?

Interstate Commerce



- ➡ Who parties
- ➡ When it needs signed
- ➡ Minimum requirements of an

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- ➡ When it needs signed
- ➡ Minimum requirements of an



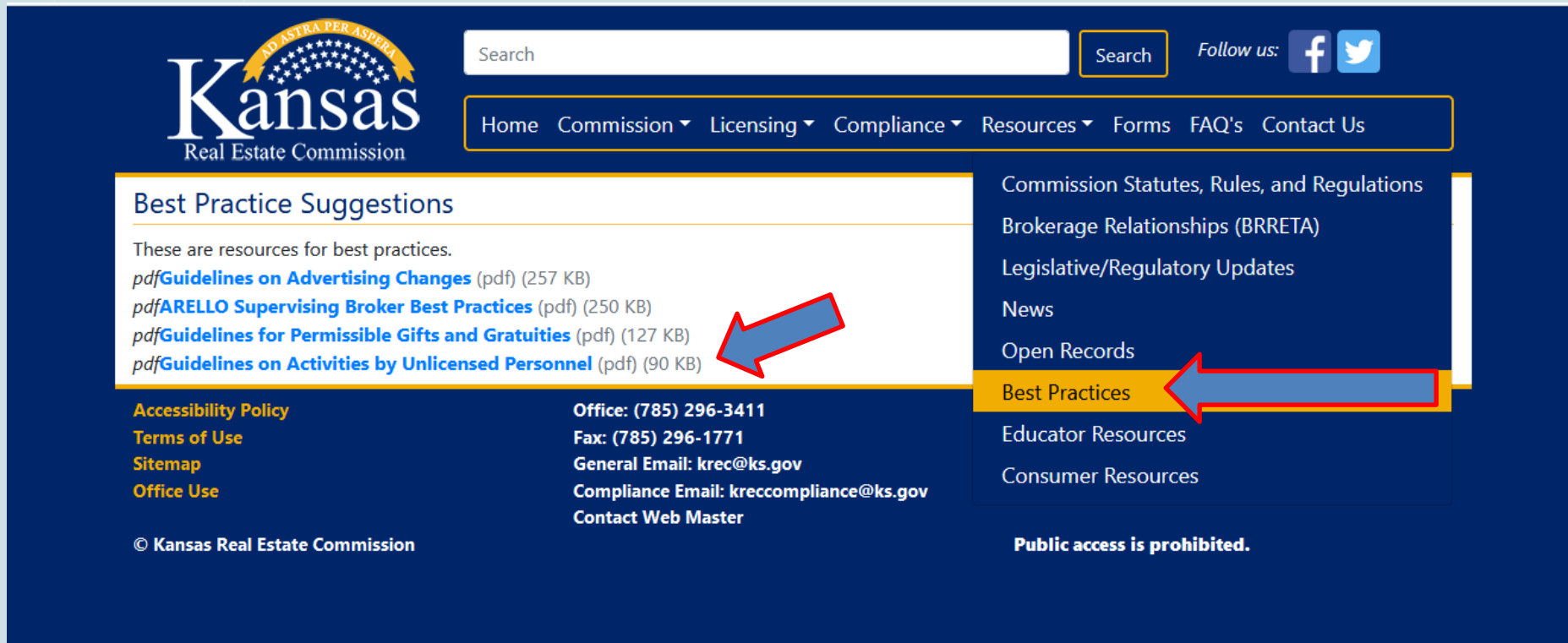


Ministerial Acts

Do they require a license?



What can my unlicensed assistant do?



Kansas
Real Estate Commission

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Best Practice Suggestions

These are resources for best practices.

- [pdfGuidelines on Advertising Changes](#) (pdf) (257 KB)
- [pdfARELLO Supervising Broker Best Practices](#) (pdf) (250 KB)
- [pdfGuidelines for Permissible Gifts and Gratuities](#) (pdf) (127 KB)
- [pdfGuidelines on Activities by Unlicensed Personnel](#) (pdf) (90 KB)

[Accessibility Policy](#)
[Terms of Use](#)
[Sitemap](#)
[Office Use](#)

Office: (785) 296-3411
Fax: (785) 296-1771
General Email: krec@ks.gov
Compliance Email: kreccompliance@ks.gov
Contact Web Master

Commission Statutes, Rules, and Regulations
Brokerage Relationships (BRRETA)
Legislative/Regulatory Updates
News
Open Records
Best Practices
Educator Resources
Consumer Resources

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Public access is prohibited.

KREC website > Resources

MREC website > Important Links > Rules/Statutes



When Does the Agency Relationship End?

When it expires

When it closes

Client Revocates

Mutual Consent and Release

Breach



What fiduciary duties don't end?



ACCOUNTABILITY



CONFIDENTIALITY



Contract Issues

- Missing or incorrect disclosures
You must fully disclose all known property defects
- Incorrect escrow agent
- Earnest Money mis-handled
- Contract dated before agency agreements are signed



Agency Agreements

- ➡ No expiration date
- ➡ Missing signatures
- ➡ Documents missing or not turned in within 10 days of signing (KS)





*Get your facts first,
then you can distort them as you please*
Mark Twain

**Misrepresentation –
It is not Puffing**

Types of Misrepresentation

- ➡ Negligent *(Careless Advertising)*
- ➡ Fraudulent *(Doing it on purpose)*
- ➡ What does E&O cover?
- ➡ Could you still be disciplined by the commission?



Types of Misrepresentation



- Didn't protect buyer/seller
- Withheld information
- Untruthful
- Advised buyer/seller on matters beyond the licensee's expertise

Violations

- ➡ Not presenting all offers / not presenting timely
- ➡ Failure to disclose material defects – contradiction of information in a written report



Violations

- Inducement to break a contract
- Failure to supervise (K.A.R. 86-3-31)
- Violation of Fair Housing

You could lose your license if you are found guilty of violating Federal Fair Housing.



the
producing
advertising. no
promotion, p
commercial

Can't I just say and
do what I want?



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.

What are the rules?

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

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Is more than 2x greater in font size than the supervising broker's business name or trade name.



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

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.

What are the rules?



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 the rules?

Check Compliance

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



Issue #1

Licensee used TBA
without having existing
agency agreements
with both seller and
buyer



What Should Have Happened?

Kansas



Don't use TBA
unless you are
already an
agent
for BOTH sides

Missouri



Don't use
Kansas TBA
form.



Issue #2

In-house sale with only
one agent trying to
be agent for one
and TB for the other
party

What Should Have Happened?

Kansas



In-house sales
with only one
agent should
be agent for
one throughout

Missouri



In-house sales
with only one
agent same as
KS or Dual

Issue #3

Contract says TB but
file contains seller
agency agreement

What Should Have Happened?

Kansas



Missouri



Should have
disclosed
seller's agent

Same as
Kansas



Issue #4

Licensee acted
as agent for
seller and TB
for buyer

What Should Have Happened?

Kansas



Licensee
cannot be an
agent for one
side and TB for
the other

Missouri



Same as
Kansas

Issue #5

Listing agent
buys own
listing while still
seller's agent



What Should Have Happened?

Kansas



Resign from
representing
seller and
become a
buyer's agent

Missouri



Same as
Kansas (dual
agency not
an option in
this case)

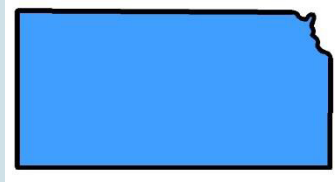


Issue #6

Licensee tried
to sell own
property as a
TB

What Should Have Happened?

Kansas



Licensee selling
own property
must be seller's
agent (not TB)

Missouri



Same as
Kansas (NOTE:
disclosure not
enough)

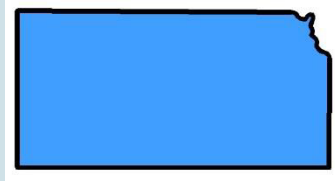
Issue #7

Licensee tried
to be TB with a
buyer relative



What Should Have Happened?

Kansas



Licensee should
be agent of
relatives (not
TB)

Missouri



Same as
Kansas (NOTE:
Code of
Ethics requires
disclosure)

Real Estate Commission



It is amazing what you can do!

- Check your status and expiration date
- Verify a license number
- Renew your license
- Request a license change: new email, new address
- Deactivate or Reactivate, company affiliation
- Find the statutes, rules & regs
- Read the newsletters
- Find FAQs

► <https://www.krec.ks.gov/>

► <https://www.pr.mo.gov/realestate.asp>



What do you have to report?

- K.A.R. 86-3-15
- 10 days to report:
- Litigation filed/Settlement agreement/court judgment
- Charges, arrest, indictment or guilty plea
- Any misdemeanor or felony
- Change of name, address, email address
- Denial of real estate license in any state
- Any suspension, revocation or voluntary surrender
- Any disciplinary action for any occupational license anywhere
- Broker also has 10 days to report felony if they know





How To Use KREC Online Licensing Services

For instructions on...

- Renewal
- Affiliation Change
- Name/Contact Info Change for Licensee
- Company Change Forms
- Reactivation
- License Certification

Go to <https://www.krec.ks.gov/forms>



THANK
YOU!