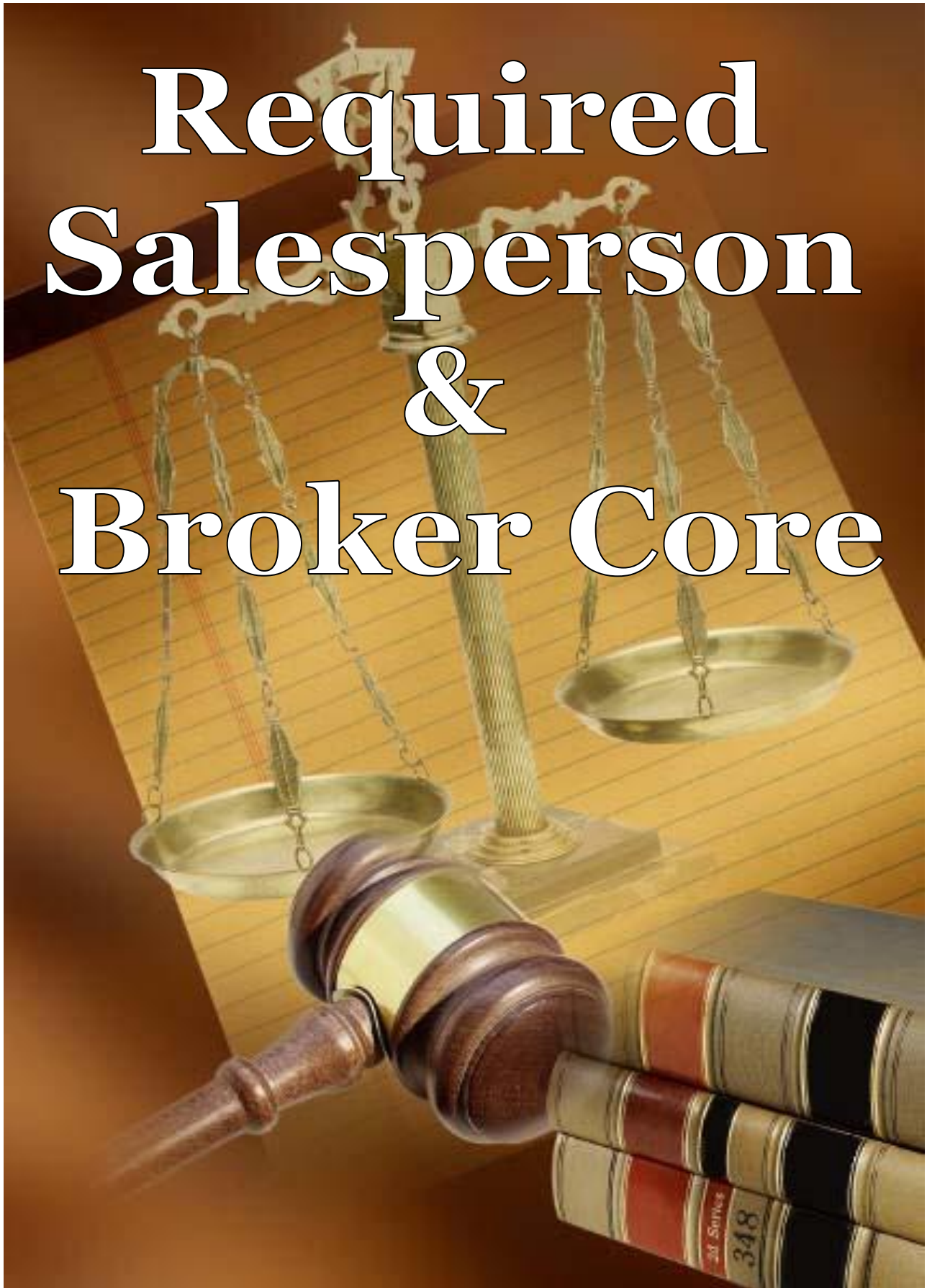


Required Salesperson & Broker Core





Please note!

- Please feel free to use both this text “book” and your Kansas license law pamphlet or the license law section on the Kansas Real Estate Commission website!. To find the site, do a Google search!
- **BRRETA**: When you see the acronym “BRRETA” used in the course, the workbook, or the exam, it stands for **BROKERAGE RELATIONSHIPS in REAL ESTATE TRANSACTIONS ACT**.

Prior to passage of BRRETA, the only way for a broker or agent to be “up to date” concerning what he could or could not do in his agency relationships, he had to read case law! Brokerage relationships “Rules” were determined by “**common law**” or **court decisions**. Needless to say, most agents looked to their firm, to board courses, or to association newsletters to keep them practicing correctly.

Today, Kansas and Missouri law and rules/regulations define agency relationships. Therefore, the options available to sellers, buyers, and real estate agents are clearly defined and readily available.

In Kansas, license law covers all real estate transactions whether they are residential or commercial transactions. All property is covered including sales and leases, new and resale residential properties, investment properties, as well as commercial and industrial and vacant land. However, in **commercial transactions, NO Broker Disclosure Brochure is required** to be presented to the seller or landlord, nor is the buyer or tenant required to receive a Broker Disclosure Brochure. For purposes of agency law, “commercial” includes typical commercial and industrial properties as well as multifamily residential of more than four units such as an eight-plex apartment building. However, this does not affect the need for all the other agency documentation such as listing agreements, contract disclosures, and Transaction Broker Addenda.

Disclosed dual agency is illegal in Kansas however it is still a legal option in our neighboring state, Missouri. **UNDISCLOSED DUAL AGENCY** is illegal in both states. This is the agency relationship created inadvertently when agents make statements that they shouldn’t! For example, when a seller’s agent tells a buyer customer (not a buyer client!) that he will take care of everything for the buyer. This type of comment leads the buyer to believe that he is being represented and thus creates undisclosed dual agency.

Perform the terms of your agreement by promoting your client’s interests:

- ▶ Timely offer presentations

- ▶ Disclose adverse material facts
- ▶ Advise client to obtain expert advice
- ▶ Timely accounting of all property and money
- ▶ Comply with all laws
- ▶ Not disclose confidential information
- ▶ Disclose facts actually known that were omitted from or contradict expert's report
- ▶ May show competing properties
- ▶ Not refuse permission to show or receive and transmit offer unless seller instructs in writing

Read the description of each of the following agency relationships in your company's Broker Disclosure Brochure. ¹

Using the broker disclosure brochure, practice explaining the brokerage relationship options to the potential buyer or seller.

1. Seller's agent
2. Buyer's agent
3. Sub-agent
4. Designated seller's agent
5. Designated buyer's agent
6. Disclosed dual agent (Missouri properties only!)
7. Transaction broker

The **duties and responsibilities of the buyer agent** to his or her buyer or tenant are by law listed in your firm's listing contract for buyer clients, probably called your Exclusive Buyer Agency Contract. Read that agreement and see the list of duties and obligations! If you do not have a copy of a buyer agency contract, you may find one on the Kansas Real Estate Commission web site.



Seller and Buyer single agency, Designated Seller and Buyer agency and Transaction Brokerage are brokerage relationships available to all real estate brokers. However, the offering of each of these relationships is voluntary on the part of the broker. **Each broker decides for his**

¹ If you do not have a copy of your firm's Broker Disclosure Brochure, you may find a copy of the Kansas brochure on the Kansas Real Estate Commission web site. If you have trouble finding these sites, use a Google search to locate it! Currently the KREC website address is <http://www.kansas.gov/krec/>.

firm which relationships will be offered. A very small firm might not offer designated agency because the small number of agents have knowledge of all the firm's clients and their situations. A large firm might offer all of the potential relationships. Despite the size or location of a real estate firm, the broker decides the agency policy for the entire firm and publishes those decisions in the company policy manual. Consult your firm's manual to determine what brokerage relationships are chosen for you to offer to consumers.

You can only provide the options selected by your broker for offered by your firm!

Transaction brokerage is a non-agency relationship!

- As a transaction broker you **assist** the consumer with the transaction.
- You do not represent the consumer!
- You may **not give advice** as a transaction broker!
- You may not allow your actions or statements to place one party at an advantage over the other! You are mandated to maintain a "level playing field" for the seller and the buyer, never making statements that "load the gun" of either party!

You may work with a consumer as a **Transaction Broker without any written agreement** or with a written agreement [until the time of the real estate sale contract's completion at which time you must state your brokerage relationship and include the compensation agreement between the seller, buyer, and licensee(s)]. You may cooperate with other firms to show their listings to the consumer with whom you work as a Transaction Broker. A cooperating agent may show a property which you market as the Transaction Broker for the seller. You may also compensate--share commission--with a cooperating agent when you work with the seller as a Transaction Broker. You may not cooperate with a "sub-agent" because you are not an agent! A non-agent can not, by definition, have a sub-agent!

Kansas PRESUMES or ASSUMES that you are a Transaction Broker! You begin working with all sellers and buyers as a Transaction Broker, unless you meet a buyer while you are holding your personal listing open. If you are holding your own listing open, you are there as a seller's agent or designated seller's agent! (The determination of whether you are a seller's agent or a designated seller's agent is your firm's brokerage relationship policy. If your firm practices single agency, you are a seller's agent. If your firm practices designated agency, you are a designated seller's agent when holding you own client's home open.)

You begin as a transaction broker (except for the open house situation defined above). Once a listing agreement has been signed, you become a seller's (or designated seller's) agent or a buyer's (or designated buyer's) agent. As an agent, you may cooperate with sub-agents if your company policy allows sub agency. **Many firms have disallowed sub agency because of the liabilities it brings through "vicarious liability" which simply means that a client and his broker are both liable for incorrect statements made by a subagent.** For example, your seller tells you, the listing agent, that he has had water in the basement but has corrected the situation through a new sump pump

and new footing drains. He indicates this on his Seller's Statement of Condition. The subagent shows the property to a buyer and says "This basement has always been dry." Despite the sellers and your efforts to communicate the correct information, you are both liable vicariously for the misstatement of the subagent!

Because your company policy determines whether you are a seller's agent or a designated seller's agent, you must correctly complete your listing contracts to fit your company's policy. If your listing agreement specifies that you are the designated agent of your seller or buyer, then you become a designated agent whether the transaction is an in-house (your firm's seller-client and your firm's buyer or buyer client) or a cooperative (coop) transaction (your firm's listing and the other firm's buyer or vice versa). Some agents believe that they can be a seller's agent for one transaction and a designated seller's agent for another and this is incorrect. The determination of your role as a single agent or a designated agent is determined by your company's policy.

When your firm offers designated agency, your branch **broker or supervision broker acts as a transaction broker** or a disclosed dual agent (Missouri ONLY!). Because the broker becomes a Transaction Broker, you as a designated agent may discuss questions and problems with your broker and he may not disclose confidential information about your client to any other agent or client.

Remember, by being a transaction broker, your supervising or branch broker can give advice to both the designated seller's and designated buyer's agents. He or she is required by law to keep the confidences of either or both sides!

The Transaction Broker addendum is utilized when you are the transaction broker for the seller or the buyer. The Transaction Brokerage Addenda list those actions that the Transaction Broker may and may not do as well as his or her duties to their client. **Note:** There are **four possible Transaction Broker addendum forms:** TBA-Res is used by firms not offering designated agency; TBA-DA is used by firms offering designated agency; TBA-Comm is used for commercial properties; TBA-AG is used for agricultural properties.

License law requires that all listing agreements be written, except those for federally owned properties. The terms of the agency agreement must be spelled out in the listing as well as the other characteristics listed here. **Seller agreements must be signed prior to performing any activities on behalf of the Seller which represent the Seller's interests. Buyer contracts must be signed prior to signing a purchase contract.** Follow your company policy because many firms required that you sign a buyer contract before performing any activities that require licensure. Check with your broker if you have questions about your firm's policies.

When you **firm practices designated agency, it is the broker who designates the seller's or buyer's agent and this happens in the listing agreement or contract.** In Missouri, the broker/owner or broker/manager must

pre-sign the listing agreement for sellers and buyers for the contract to be effective when signed by the client. Many brokers pre-sign these agreements and have them available to agents in their office's forms cabinet.

In Kansas, the client must approve Transaction Brokerage and Designated Agency in "theory" in the listing agreement². The term "potential" means that there is the potential or possibility that the listing agent may become a transaction broker. Whether your firm's policy dictates single agency or designated agency, the client must approve the possibility of TB. License law requires that **all listing agreements, seller or buyer, indicate that there is the "potential" for the listing agent or other agents in the firm to act as a designated agent, a transaction broker**³. Remember that disclosed dual agency is legal in Missouri but not in Kansas. If you sell a Missouri property belonging to your seller client to your buyer client, you may be either a Transaction Broker or a Disclosed Dual Agency. Like the Transaction Broker addendum, the Missouri property sale contract must include the correct verbiage disclosing what the DDA can and can not do or disclose.

² In Missouri, the seller and buyer must approved Designated Agency, Transaction Brokerage, and Disclosed Dual Agency "in theory" in the listing contracts!

³ Kansas license law clearly states this requirement for approval in "theory" as follows: An agency agreement with a seller or landlord shall include any potential: for the seller's agent or landlord's agent to act as a transaction broker; for an affiliated licensee to act as a designated agent for the buyer and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker; or for the broker to designate an affiliated licensee to act as the designated agent for the seller on the broker's personal listing pursuant to subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.

An agency agreement with a buyer or tenant shall include any potential: For the buyer's agent or tenant's agent to act as a transaction broker; or for an affiliated licensee to act as a designated agent for the seller and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker.

Ministerial Acts

Ministerial acts could also have been called “informational” acts because they involve providing information to the public. Ministerial acts are those actions which can be performed prior to presenting the Broker Disclosure Brochure. For example, the following are Ministerial Acts:

- At an open house you may disclose the price and discuss the material facts and defects of the property with a consumer without triggering presentation of the Broker Disclosure Brochure.
- If a consumer walks into your office, you can quote your firm’s listing commission and explain your marketing program without triggering the Broker Disclosure Brochure.
- You may refer a friend, neighbor, or past client to an agent in another city or state without triggering presentation of the brochure.
- You may open another agent’s listing for an appraiser, inspector, or contractor (obviously with the permission of the owner!) without triggering presentation of the brochure.

The Kansas Broker Disclosure Form

The purpose of the Broker Disclosure Brochure is to provide the consumer with **their choices of brokerage relationships**. It is used to present the brokerage relationship options to the potential buyer or seller! Once you’ve discussed or performed those items listed as ministerial acts or informational acts and the potential seller or buyer begins to discuss personal information (also substantive information, present the brochure and explain their brokerage relationship choices! **In other words, before you discuss personal information with a prospective seller or buyer, present the broker disclosure brochure!** The purpose of this process and the brochure is to assist the consumer in making educated decisions. Therefore, do not simply hand the brochure to the consumer! Explain the options and answer all questions which the seller or buyer may ask so that they can make that educated decision⁴!



The required elements of brokerage relationships which must be explained in the Broker disclosure brochure are described in the following quotation from Kansas statute 86-3-26: Real estate brokerage

⁴ Remember that if your form includes a signature or acknowledgement portion to the brochure and if you ask the consumer to sign the “acknowledgement” section of the brochure, they are simply acknowledging receipt of the brochure not committing to work with you under any of the offered relationships! They must acknowledge receipt of the brochure in the real estate sale contract. That acknowledgement will be included in your sale contract, whether you use a board or association form or your company provides a form specific to your firm.

relationships brochure.⁵ These elements include Seller Agency, Buyer Agency and Transaction Brokerage.

In addition, license law states the following about the disclosure brochure: *“As required by K.S.A. 58-30,110, and amendments thereto, each licensee shall give any prospective buyer or seller a brochure entitled “Real Estate Brokerage Relationships.” Each brokerage firm may either obtain a copy of this brochure from the Commission for reproduction and use by its affiliated licensees or design a brochure that contains the minimum information contained in subsections (a), (b), (c), and (d). If a brokerage firm designs its own “Real estate brokerage relationships” brochure, the brochure may be in a format determined by the brokerage firm and may include the company name, company logo, and an explanation of the firm's brokerage relationships policy.”*

⁵ The source of this information is the KREC website located currently at <http://www.kansas.gov/krec/>; however, if this link no longer works because of a moved page, you may search for the information at www.google.com by searching for the Kansas Real Estate Commission and then doing a site search for Brokerage Disclosure Brochure!

The following excerpts from the KREC website describe **what must be included in the Broker Disclosure Form**. Also the duties detailed below which are due to the consumer who is represented by a seller's or buyer's agent must also be included in your seller and buyer listing forms!

- a. **Seller's agent.** *The seller's agent represents the seller only, so the buyer may be either unrepresented or represented by another agent.*
 1. *The seller's agent is responsible for performing the following duties:*
 - A. *Promoting the interests of the seller with the utmost good faith, loyalty and fidelity;*
 - B. *protecting the seller's confidences, unless disclosure is required;*
 - C. *presenting all offers in a timely manner;*
 - D. *advising the seller to obtain expert advice;*
 - E. *accounting for all money and property received;*
 - F. *disclosing to the seller all adverse material facts about the buyer that the agent knows; and*
 - G. *disclosing to the buyer all adverse material facts actually known by the agent, including the following:*
 - i. *Environmental hazards affecting the property that are required to be disclosed;*
 - ii. *the physical condition of the property;*
 - iii. *any material defects in the property or in the title to the property; and*
 - iv. *any material limitation on the seller's ability to complete the contract.*
 2. *The seller's agent has no duty to perform the following:*
 - A. *Conduct an independent inspection of the property for the benefit of the buyer; or*
 - B. *independently verify the accuracy or completeness of any statement by the seller or any qualified third party.*
- b. **Buyer's agent.** *The buyer's agent represents the buyer only, so the seller may be either unrepresented or represented by another agent.*
 1. *The buyer's agent is responsible for performing the following duties:*
 - A. *Promoting the interests of the buyer with the utmost good faith, loyalty, and fidelity;*
 - B. *protecting the buyer's confidences, unless disclosure is required;*
 - C. *presenting all offers in a timely manner;*
 - D. *advising the buyer to obtain expert advice;*
 - E. *accounting for all money and property received;*
 - F. *disclosing to the buyer all adverse material facts that the agent knows; and*
 - G. *disclosing to the seller all adverse material facts actually known by the agent, including all material facts concerning the buyer's financial ability to perform the terms of the transaction.*
 2. *The buyer's agent has no duty to perform the following:*

- A. Conduct an independent investigation of the buyer's financial condition for the benefit of the seller; or
 - B. independently verify the accuracy or completeness of statements made by the buyer or any qualified third party.
- c. **Transaction broker.** The transaction broker is not an agent for either party, so the transaction broker does not advocate the interests of either party.
- 1. The transaction broker is responsible for performing the following duties:
 - A. Protecting the confidences of both parties, including the following information:
 - i. the fact that a buyer is willing to pay more;
 - ii. the fact that a seller is willing to accept less;
 - iii. the factors that are motivating any party;
 - iv. the fact that a party will agree to different financing terms; and
 - v. any information or personal confidences about a party that might place the other party at an advantage;
 - B. exercising reasonable skill and care;
 - C. presenting all offers in a timely manner;
 - D. advising the parties regarding the transaction;
 - E. suggesting that the parties obtain expert advice;
 - F. accounting for all money and property received;
 - G. keeping the parties fully informed;
 - H. assisting the parties in closing the transaction;
 - I. disclosing to the buyer all adverse material facts actually known by the transaction broker, including the following:
 - i. environmental hazards affecting the property that are required to be disclosed;
 - ii. the physical condition of the property;
 - iii. any material defects in the property or in the title to the property; and
 - iv. any material limitation on the seller's ability to complete the contract; and
 - J. disclosing to the seller all adverse material facts actually known by the transaction broker, including all material facts concerning the buyer's financial ability to perform the terms of the transaction.
 - 2. The transaction broker has no duty to perform any of the following:
 - A. conduct an independent inspection of the property for the benefit of any party;
 - B. conduct an independent investigation of the buyer's financial condition; or
 - C. independently verify the accuracy or completeness of statements by the seller, buyer, or any qualified third party.

- d. **Statement of representation.** *The following statement, in bold-faced type, shall be included in the brochure. "Do not assume that an agent is acting on your behalf, unless you have signed a contract with the agent's firm to represent you. As a customer, you represent yourself. Any information that you, the customer, disclose to the agent representing another party will be disclosed to that other party. Even though licensees may be representing other parties, they are obligated to treat you honestly, give you accurate information, and disclose all known adverse material facts."*

Disclosure in Real Estate Sale Contracts and Lot Reservation Agreements

Once the consumer has selected a property and made an offer as well as once the seller has received an offer to purchase his property, these disclosures must be included in the real estate sale contract!

- Both parties must acknowledge receipt of the Broker Disclosure Brochure.
- The agency disclosure addendum or required verbiage in a paragraph or section of the real estate sale contract must detail how the listing and selling agents are working with the seller and buyer as well as detailing who is paying the commission.
- These disclosures must also be included in lot reservation agreements frequently used in new home subdivisions to reserve a lot prior to commencement of construction.

Key Differences between Kansas and Missouri license law relating to brokerage relationships.

1. Kansas (but not Missouri) license law specifies what happens when a buyer wishes to make an offer in the absence of his/her buyer agent. The Kansas Real Estate Commission provides a form in which a buyer client may acknowledge that he has an agent and may be liable to pay that agent's commission but desires to write a purchase agreement with the sellers or builder's agent. This situation most frequently occurs in new home subdivisions when the buyer has been there a number of times without his agent and wants to proceed with his purchase. Kansas law, unlike Missouri license law, also provides that the buyer's agent may make an offer directly to the seller as long as the seller's agent is present.
2. Kansas license law requires showing agents **to TELL a cooperating** company agent or cooperative showing firm's agent that he is a buyer's agent, sub-agent of the seller, or transaction broker. Specifically, the agent setting up his or her showing must reveal whatever his agency relationship is to the consumer to whom he's going to show the property. The law also requires the agent who's setting up the showing for the **seller to**



ASK what is the relationship of the showing agent is to the buyer. The purpose of this provision is to put the seller on notice when a showing agent represents the buyer. Today most selling agents are buyer's agents but, unfortunately, the "asking" and "telling" are frequently omitted!

When do Brokerage Relationships End?

Agency duties and obligations end when the transaction closes or (in the event there is no sale) at the expiration or authorized termination of that listing agreement. This is true for both seller and buyer listings. However, certain duties continue or "survive" the expiration of the listing contract. This is true both because of license law for all licensees and because of the Code of Ethics for REALTORS®. Both the license law and the Code require the survival of certain duties.

Confidentiality

Which duties or responsibilities survive the closing of the transaction? You are responsible to account for any monies or properties that belong to your client. You must also continue to hold confidential any information learned during the term of your listing, until or unless certain specific things occur! These are the situations in which you are no longer required to keep confidences confidential:

- The client authorizes release of the information or makes the information public himself.
- Law requires disclosure of the information.
- The information becomes public through another source, whether that be through a neighbor, a newspaper, or a court action.

Compensation and Brokerage Relationships

Compensation and brokerage relationships are two entirely different and separate issues! Many consumers have felt that if a buyer is represented, the buyer must pay the buyer's agent. This is not true. The seller may pay all agents or the buyer may pay all agents. A third party might pay the commissions, such as a third party relocation company. By license law, only the broker may pay agents licensed in his firm or office.

Warnings for Practicing Designated Agency!

When practicing designated agency in your firm, you must be sure to keep all confidential information confidential. You must not allow another agent in your firm to learn your client's confidences because next week that agent could be a designated agent for buyer for your listing or for a property for your buyer. If you've allowed them



to learn your seller's or buyer's secrets, then they must divulge those "secrets" to their new client. This would put their client at an advantage over your client and this is NOT ALLOWED!

When practicing designated agency, it is essential to keep clients' confidences within your office by securing documents that might reveal these confidences. For example, **keep the following secure:**

- Limit access to client files to the broker and the listing agent, whether buyer or seller client.
- Don't post sale prices until the sale closes.
- Limit access to incoming faxes so that confidential information isn't disclosed such as offers and counter offers and price change or term change authorizations.

"Loose lips sink ships" or "Keep your mouth shut" are both good advice to protect the best interests of your client, whether you represent the seller or the buyer. Don't allow loose conversation in your office or with other agents over lunch or on property tour to put your client at a disadvantage! Even in firms practicing single agency where all the agents represent all seller and buyer clients, it is smart to protect your client's confidential information because you can not ever assure that other agents will practice confidentiality correctly!

Misrepresentation & Fraud

Why study misrepresentation? Consistently for a number of years, the largest percentage of lawsuits against real estate licensees has been for misrepresentation or fraud! Our course's **MISSION** is to make you aware of what constitutes misrepresentation and how you can protect yourself against the charge of misrepresentation!

By **definition**, misrepresentation means a "false representation of a material fact or the failure to disclose a known property defect, which results in damage to the purchaser!"

FAQ's about "material" facts:

Q: What are the types of Misrepresentation?

A: There are four types of misrepresentation as follows:

1. **Intentional misrepresentation or fraud** is defined as an intentionally false statement of a material fact which results in damage to the buyer.
2. **Negligent misrepresentation** means a false statement (with no real basis for believing it to be true) of a material fact which results in damage to the buyer.
3. **Conscious Ignorance** can best be described as the three monkeys, See no evil, Hear no evil, and Speak no evil! It means a false statement of a material fact without making a visual inspection of the property involved and which causes damage to the buyers.
4. The most frightening type is **innocent misrepresentation** which means that a licensee doesn't even need to make a false statement but damage occurs to the buyer and the licensee didn't make a thorough visual inspection of the property to identify any red flags.

Q: How can I tell if it's a material fact?

A: *If knowledge of the fact would impact a buyer's decision about buying a house, that fact is material!*

Q: When showing properties, how do I know what to disclose and what I don't need to disclose?

A: *If your purchaser client or customer has narrowed their choices to one or two properties, it's time to discuss material facts, suggesting the use of professionals such as inspectors to determine the nature of potential defects in the home.*

Q: Do I need to disclose the material facts in every house I show?

A: *If you believe that your purchaser seriously considers buying each property you show them, you may want to have a discussion about the importance of utilizing an "independent third party" professional or inspector to make a*

thorough inspection and to discover any material facts or defects. However, with most purchasers, you will know when they are becoming seriously interested in a property or two and you must be sure that they don't overlook defects or potential defects that you observe as you show them.

Fraud, intentional misrepresentation, occurs when a licensee **intentionally misleads** a client or customer by making a false statement or **consciously fails to disclose** a known defect.

Here's an example:

Sally Agent knows that the basement of a property has flooded in the past year and no correction; repairs have been made by the owner because her daughter is friends with the seller's daughter.

Sally tells Johnny Smith, buyer, that "there's never been water in this basement!" (Or Sally simply fails to mention that she knows the basement has flooded)

Has Sally intentionally misrepresented the situation to the buyer? YES!

In Kansas, if the seller of the property shot and killed himself in his car in the garage of a property, must an agent disclose this fact to a potential buyer?

In Kansas, we currently have no direction from state statute about whether we must disclose "psychological impact" about a property. Psychologically impacted properties include those in which there has been a murder, a suicide, or a haunting. Missouri law specifies that these situations are NOT material (do not require disclosure)

If you are called in to list a property which suffers from one of these psychologically impacting situations, ask your broker for direction. One way to handle this situation is to ask the seller for written permission to answer a buyer's question about the situation truthfully. For example, if a buyer says "Was this the house in which the seller killed his wife and then shot himself last year?" With the seller's written permission, you can answer that question truthfully. Because these situations may be emotionally charged and therefore may create liability, be sure to secure your Broker's advice and act accordingly!

Now that we've defined and described misrepresentation, let's address methods for avoiding it!

Here's a list of disclosure steps that will reduce your risk of misrepresenting a property.

- First, be sure that the information is factual. (For example, there may be some physical symptom of a defect but the defect itself has been repaired and only the symptom remains.
- Know the law for the state in which you are working! Kansas and Missouri law differ in a number of key areas such as psychological impact.
- Always discuss material facts and defects with your seller client. You must disclose material facts even when sellers would prefer that you remain silent about them. Be sure that your seller clients understand your legal responsibilities.

If the seller died of AIDS, must you disclose that or is it a psychological impacting situation?

NO! AIDS falls under the federal Fair Housing legislation as a handicap and therefore you CAN NOT DISCLOSE that a seller or prior tenant of a rental property suffered from or died from AIDS! Just as you can not answer questions about the race, color, religion, sex, or national origin of a seller or buyer, you can not answer questions and must not volunteer information about AIDS.

The National Association of REALTORS® provides many resources for agents and brokers. In one of NAR's publications about fair housing issues, they suggest this "sample response."

"Justifiable reliance" means that courts have ruled that John Q. Public has the right to rely on statements made by real estate licensees. If you state that the "basement has always been dry," the buyer can rely on your statement to be correct and truthful.

Be warned! Do not make statements of fact unless they are factual, truthful, and correct! You create liability for yourself and your firm when you make such statements.

How can you provide information to a potential buyer without creating liability? Use the seller's statement of condition form which provides a vehicle for transmitting this kind of information and places the liability where it belongs—on the seller!

What's a "red flag?" It's any indication or a material fact or defect.

Examples of red flags include the following list, but there are many more!

- Brown water spots on the ceiling
- Cracks in the foundation walls
- Rotten wood in framing or siding
- Shiny or glossy soil

One of the potentially hazardous materials found in older homes is asbestos. Asbestos was once commonly used in exterior siding shingles, floor tiles, ceiling tiles, interior wall sheeting, as well as insulating covering for boiler pipes. Because of the many building materials that contained asbestos, its appearance can take many forms. This slide illustrates four of the most common appearance of asbestos in housing.

Learn to recognize the "red flags" of potentially hazardous materials such as asbestos.

Lead-based paint, once believed to be the most durable paint, was at times required in building homes and public buildings. Therefore, a vast -number of homes built before it was banned in 1978, contain lead lead-based painted interiors.

Today, scientists have found that lead can be ingested from the flaking, peeling, or “dusting” of lead paint into air, drinking water, and food, especially dangerous to small children. Children’s small body weight means that if they breathe or ingest lead paint, the concentration in their blood streams can be even more deadly than in adults with their larger body mass.

Another potential hazard, especially in older homes and farm properties, comes from buried fuel tanks. In the early years of the 1900’s, home owners frequently fueled their furnaces and automobiles or tractors and farm equipment from fuel tanks on their property. They buried these tanks for safety and convenience as well as appearance. Later, homes heated with oil were generally fueled from buried tanks.

You may find a potential listing which has such buried tanks. There are a number of potential hazards caused by buried tanks; however, the most common is contamination of the soil around the tank and contamination of ground water in the area of the tank. Also, tanks out of service must be removed or sealed in specific manners to pass environmental inspections.

Here’s a list of techniques you can employ to avoid misrepresenting property:

- Check the accuracy of all information before sharing it with potential purchasers.
- Avoid exaggerating the benefits of a property, frequently called “puffing”!
- Always make thorough visual inspections of properties which you plan to list or which your buyer clients or customers consider purchasing, looking for “red flags” indicating potential material facts or defects.
- Follow-up those “red flags” by asking questions of the seller or listing agent and always suggest the use of third party experts to inspect potential hazards or defects.
- Identify opinions as opinion! Never allow purchasers to believe that you are stating fact. (Remember “justifiable reliance.”)
- Generally, exercise caution, follow solid procedures and systems.
- Never practice law, accounting, architecture, engineering, etc. by sounding like an expert in those fields. You are a real estate agent not an accountant!

Effective disclosure benefits everyone involved in the real estate transaction! Protect yourself, the seller, and the buyer as well as other agents and your brokers by practicing risk reduction practices!

When a licensee misrepresents, he or she faces severe penalties!

1. The transaction may not close or it may be rescinded through legal action after closing if it is based on a misrepresentation.
2. The injured party in a suit may receive out of pocket costs as well as damages.

Actual damages represent the cost of correcting the defect that was misrepresented.

Punitive damages may be awarded by the court to penalize or punish the offending agent and broker as well as to discourage real estate practitioners from misrepresenting.

When a Kansas real estate licensee misrepresents, the customer may be able to recover losses from the real estate recovery revolving fund. When revolving fund monies are paid to an offended client or customer, the agent's license will be revoked. The agent must pay back those monies before he or she may receive a new license including interest!

In addition, it is a breach of the National Association of REALTORS® Code of Ethics to misrepresent. Therefore a REALTOR® may also be the recipient of a complaint under the Code of Ethics.