

Kansas Required Broker CORE: Brokerage Relationships, Managing & Supervising Licensees, & Common Violations

Agents Must Understand the Law & Follow It!

Regularly update associates, not only explaining changes in the laws/rules and regulations, but also providing scripts, presentation tools, and case studies for thought and discussion. If it is not practical in your company situation to provide these tools, at the very least provide locations, web sites, sources of information, presentation tools, and situational studies. One of the best sources of this information is the National Association of REALTORS® web site, currently www.realtor.org.



Office Training, Procedures, and Tools

Office training should always include **BRRETA** requirements [[Brokerage Relationships in Real Estate Transactions Act section of the Kansas license law](#)], how to present consumer options, and "representation in fact." Additionally, it is necessary to create and maintain systems and procedures for

- establishing,
- checking, and
- maintaining comprehensive records.

Each state mandates the required "**paper trail**" for brokerage relationships from first contact through closing and the finished file. Agents frequently hone their personal selling skills and allow documentation and record keeping to slide. The firm must create and maintain systems to manage transaction and agent records, including the following.

R & R [Records & Recognition]

- Create a system for recognizing excellent performance by associates, not just in production but also in transaction documents, files, and follow-through!
- Create the ideal "paper trail" for company records

Forms	Provide all the necessary forms (hard copies & computerized) irrespective of who bears the cost of these forms, the firm or the associates.
Agent accountability	Hold all associates accountable for not only performance and productivity but also for correctness in their documents and record keeping
Office processing and check-listing files	Provide systems for proper processing of listings, offers, and contracts, including procedures for checking all legal requirements.
Permanent records	Maintain state required transaction files plus those records necessary to maintain ongoing relationships with clients and customers, whether or not the agents who generated those transactions continue with the firm. ¹ See the "Exhibit Section" of this course for audit information!

¹ Check out these resources on the KREC website: [Regulation 86-3-10](#) all records relating to the broker's real estate business are to be retained in the broker's files for three years; [Regulation 86-3-22](#) transaction numbers are to be assigned and placed on all applicable records; [Regulation 86-3-18](#) if the broker maintains a trust account, a complete record of all monies received or escrowed on real estate transactions must be maintained

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Expert Advice:

1. An accomplished manager of a large office in a major multi-office firm used the following technique to encourage agents' contract skills. She reviewed each sale contract using a checklist which allowed her to note all errors; missing information or signatures; and missing or incorrect addenda. She then turned the contract and checklist over to a secretary who prepared an amendment correcting any and all mistakes which the agent then had to get signed by both sellers and buyers. She discovered that it only took one or two such amendment exercises before the agent stopped making careless mistakes! The embarrassment of returning to clients and cooperating agents with a "clean-up" amendment proved to be a self-correcting experience!
2. Utilize a "Priority Item Checklist" for each closed file. Copy the required list from the real estate commission audit guidelines and turn the list into a checklist. Next, compile all the required items, fasten them behind the checklist, and place this "required item" checklist on top of the file inclusions. If this is completed prior to filing the closed file, you will always have all the audit-checked items on top and ready for the real estate commission auditor or for any other situations which arise requiring these priority items!

Office Training in Brokerage Relationships

The first step in reducing liability for most brokers begins with **clearly written and regularly reviewed brokerage relationships policies and procedures published in an office policy manual.**

For brokers with an intranet for their associates, the policies and procedures can be published and readily available 24/7/365 (24 hours a day, seven days a week, and 365 days a year) on the company web site!

86-3-26 Real estate brokerage relationships 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."



Therefore, it is every broker' owner's responsibility to create a policy [obviously this would be best in writing!] describing the brokerage relationships she will offer through her associates. Many brokers simply utilize a policies and procedures manual provided by their franchise or by a management group of which they are a member. It's an excellent benefit to have these manuals available; however, these types of materials generally cover all the potential brokerage relationships available nationwide and may not be correct in your state. If you utilize these documents, have you checked them for correctness under your license law/rules and regulations? Has your firm's attorney checked them for legal correctness in your state?

Policies and procedures require regular updating to keep them viable and in-line with state and federal regulations. Printing manuals can become expensive and time-consuming. Using an intranet (available only to current licensees and staff of the firm) to publish this significant document may save management time and company dollars.

In addition to the time and money savings, publishing these policies online makes it difficult for any associate to claim that he did not know the "rules" or hadn't been presented with the most recent office manual.

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If writing the firm's policy for brokerage relationships is beyond your time or patience limit, contact the Kansas Association of REALTORS® for resources!

A Review of the Brokerage Relationships

To determine which brokerage relationships best fit your firm and its licensees, let's review the description and responsibilities of each status:

Seller's Agent

The seller's agent represents the seller only, so the buyer may be either under-represented or represented by another agent.



Legal Duties of Sellers' Agent to Seller	Legal Duties of Sellers' Agent to Buyer
Obtain acceptable price	Disclose material defects of property
Suggest negotiation strategy	Disclose if seller unable to complete contract
Disclose all information agent knows	
Keep seller's information confidential	
Disclose if buyer unable to complete contract	

The seller's agent is responsible for performing the following duties:

Seller's Agent Duties
promote the interests of the seller with the utmost good faith, loyalty, and fidelity
protect the seller's confidences , unless disclosure is required
present all offers in a timely manner
advise the seller to obtain expert advice
account for all money and property received
disclose to the seller all adverse material facts about the buyer that the agent knows
disclose to the buyer all adverse material facts actually known by the agent, including: <ul style="list-style-type: none"> • environmental hazards affecting the property that are required to be disclosed • 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

The seller's agent has **no** duty to (1) conduct an independent inspection of the property for the benefit of the buyer or (2) independently verify the accuracy or completeness of any statement by the seller or any qualified third party.

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Buyers' Agent

The buyers' agent represents the buyer only, so the seller may be either unrepresented or represented by another agent.

Legal Duties of Buyers' Agent to Seller	Legal Duties of Buyers' Agent to Buyer
Disclose if buyer unable to complete contract	Obtain acceptable price
	Suggest negotiation strategy
	Disclose all information agent knows
	Keep buyer's information confidential
	Disclose material defects of property
	Disclose if seller unable to complete contract

The buyer's agent is responsible for performing the following duties:

Buyers' Agent Duties
promote the interests of the buyer with the utmost good faith, loyalty, and fidelity
protect the buyer's confidences , unless disclosure is required
present all offers in a timely manner
advise the buyer to obtain expert advice
account for all money and property received
disclose to the buyer all adverse material facts about the seller and the property that the agent knows
<ul style="list-style-type: none"> • environmental hazards affecting the property that are required to be disclosed • 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
disclose 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

The buyer's agent has no duty to: (1) conduct an independent investigation of the buyer's financial condition for the benefit of the seller or (2) independently verify the accuracy or completeness of statements made by the buyer or any qualified third party.

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Transaction Broker

The transaction broker is not an agent for either party, so the transaction broker does not advocate the interests of either party. However, the transaction broker protects the confidences of both parties!

Legal Duties of Transaction Broker to Seller	Legal Duties of Transaction Broker to Buyer
Disclose all information agent knows	Disclose all information agent knows
Keep seller's information confidential	Keep buyer's information confidential
Disclose if buyer unable to complete contract	Disclose material defects of property
	Disclose if seller unable to complete contract

Also, the transaction broker is responsible for performing the following duties:

Transaction Broker Duties
exercise reasonable skill and care
present all offers in a timely manner
advise the parties regarding the transaction
suggest that the parties obtain expert advice
account for all money and property received
keep the parties fully informed
assist the parties in closing the transaction
disclose to the buyer all adverse material facts actually known by the transaction broker, including: <ul style="list-style-type: none"> • environmental hazards affecting the property that are required to be disclosed • 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
disclose 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

Disclosure Responsibilities of the Transaction Broker

If the transaction is the sale of one to four residential units or the sale of agricultural real estate, the following information shall not be disclosed by a transaction broker without the consent of all parties:

- that a buyer is willing to pay more than the purchase price offered for the property
- that a seller is willing to accept less than the asking price for the property
- what the motivating factors are for any party buying or selling the property
- that a seller or buyer will agree to financing terms other than those offered; or

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- 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.

If the transaction is the sale or lease of commercial property or residential property of more than four units, the transaction broker shall not disclose any information or personal confidences about a party to the transaction which might place the other party at an advantage unless failure to disclose such information would constitute fraudulent misrepresentation. The transaction broker may disclose the following information unless prohibited by the parties:

- that a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property
- that a seller or landlord is willing to accept less than the asking price or lease rate for the property
- what the motivating factors are for any party buying, selling, or leasing the property; or
- that a seller, buyer, landlord, or tenant will agree to financing terms other than those offered.

The transaction broker has 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, or independently verify the accuracy or completeness of statements made by the seller, buyer, or any qualified third party.



Clarifying the "Designated Agency" Relationship

Legal Duties of Designated Sellers' Agent	Legal Duties of Designated Buyers' Agent
Obtain acceptable price	Obtain acceptable price
Suggest negotiation strategy	Suggest negotiation strategy
Disclose all information agent knows	Disclose all information agent knows
Keep sellers' information confidential	Keep buyers' information confidential
Disclose if buyer unable to complete contract	Disclose material defects of property
	Disclose if seller unable to complete contract

It's obvious from reading real estate commission commentary and from frequently asked questions from licensees, that the Designated Agency relationship still challenges agents. Let's address some of the frequently asked questions about Designated Agency:

Q What is Designated Agency and how is it different from seller and buyer agency?

Designated Agency came about because of brokers' desire to limit disclosed dual agency or transaction brokerage for in-house transactions. Brokers in large firms especially favored the adoption of Designated Agency because of their large listing inventories which attracted a large number of in-house sales. Therefore, Designated Agency became the alternative to frequent DDA or TB.

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Designated Agency begins with the designation of a client's agent in the listing agreement. The broker, through the listing contract, designates the listing agent (either property listing or buyer listing) as the designated agent of that specific client for the duration of the contractual relationship. If the firm allows DDA or TB, the listing agreement must also include permission for those relationships which will still occur when one agent has a client level relationship with both the seller and buyer in a single transaction.

Reminder! In Missouri, the broker must pre-sign the listing agreement for both sellers and buyers so that the agency contract becomes effective when the consumer signs it.

Q Can more than one agent be designated to represent one seller or one buyer?

KREC says that "Although the definition of 'designated agent' uses the singular [to act as the agent of a broker's buyer or seller client], K.S.A. 58-30,109(b)(1) appears to permit more than one affiliated licensee to be designated as legal agent. If we assume that two or more licensees may be designated, they jointly act as the legal agent."

Q What is undisclosed dual agency really and how I can get in trouble with it?

- **Disclosed dual agency**, which is ***NOT a legally acceptable relationship in Kansas***, occurs when an agent has an agency relationship with a seller and also with the buyer who wishes to purchase the seller's property. If both the seller and the buyer have approved disclosed dual agency in theory at the time they signed their respective listing agreements, the agent may show and sell his owner client's property to his buyer client. In the real estate sale contract, full disclosure must be made describing the disclosed dual agency and what it means to each client.
- **Undisclosed dual agency** occurs when an agent implies representation where none exists. For example, a listing agent shows a property belonging to his seller client to a prospect with whom he has no agency relationship. In conversation with that buyer customer, when the agent makes statements such as "Don't worry about it, I'll take care of you" to the buyer, he is leading the buyer to believe that they have a representation level or client level relationship. Such statements may be innocent on the part of the agent, but he still crosses the line when he creates the feeling of representation in the mind of the buyer. It could also occur when a buyer's agent shows a "For Sale By Owner" to his client. After the showing, the agent contacts the seller to ask additional questions for his client. The seller asks the agent about how the transaction will go if the buyer makes an acceptable offer. The agent tells the seller that he will take care of the transaction for him, dealing with the title company, the lender, and the inspectors. If the agent makes these statements in such a way that it leads the seller to understand he is represented, the agent has created an undisclosed dual agency.

Q If I sell my owner-client's property to any buyer, am I automatically a Transaction Broker?

No! Any licensee may sell his listed property to a buyer customer without creating Transaction Broker relationship. Many licensees believe they are forced into TB whenever they sell their listing to a customer not represented by another agent. That is not the case. In fact, selling their listing only becomes TB when the licensee has a written agency agreement with both parties to the transaction. Furthermore, it can never happen if either client has rejected the potential for TB in the listing agreement (either seller or buyer). The licensee whose seller client has rejected TB, can never show the listed property to a buyer client (unless the seller changes his position and amends his listing agreement in writing prior to the showing).

Q If a prospective client doesn't want to approve TB, what can I do?

In many cases, the prospect who fears TB doesn't understand it! First, develop excellent presentation tools to assist explaining all the brokerage relationships, but especially those which are frequently confusing or misunderstood. The brokerage relationship "pictures" used throughout this course are examples of a visual presentation of the relationship. Visuals generally make this complex

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choice easier to understand and easier to compare to the other relationships. Some prospects may still disapprove TB for sound personal reasons. In that case, we respect and follow the desire of our new client or we don't take the listing!

Q When must I present the TB addendum during a contract presentation to a seller or during the writing of an offer with a buyer?

The agency disclosure addendum (or verbiage within the contract form) as well as the TB addendum to the contract form **explain and clarify** your relationship with the consumer. Therefore, it is imperative to present that verbiage or that addendum before writing the offer or presenting the offer. Why? The relationship determines how you interact with the consumer. For example, if your relationship to the consumer is as a TB, you cannot suggest negotiating strategies. If you are a TB to the consumer, you cannot give advice. It is both legally required as well as both fair and just to remind the consumer what your relationship is before you begin writing or presenting the offer to purchase agreement!

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Brokerage Relationships in Practice: Broker Disclosure Brochure

The first required brokerage relationship document is the Broker Disclosure Brochure. Both Kansas and Missouri require that this brochure be presented at the first practical opportunity. The exact direction for each state is as follows:

Kansas

Section 58-30,110
Real estate brokerage relationships, section 2 and 3

- Except as provided in subsection (a)(3), a licensee shall furnish a prospective buyer or seller with the brochure at the first practical opportunity.
- A licensee is not required to provide a copy of the brochure to a prospective buyer or seller in the following instances: The licensee is acting solely as a principal and not as an agent for another; the communication from the licensee is a solicitation of business; the transaction is regarding the sale of commercial property or the sale of residential property of more than four units; the transaction is regarding the sale of property by public auction; the licensee is only performing ministerial acts; or the customer or client has already received the brochure from the licensee's brokerage firm.

Understanding Ministerial Acts

Ministerial Acts could have been called "Informational Acts" because they do not "cross the line of active representation."² They include the following:

- Responding to consumer telephone inquiry about the availability and pricing of brokerage services.
- Responding to telephone inquiries about the price or location of property.
- Attending an open house and responding to consumer questions about the property.
- Setting an appointment to view property.
- Responding to consumer questions about brokerage services offered on particular properties while in a licensee's office.
- Accompanying an appraiser, inspector, contractor or similar third party on a property visit.
- Describing a property or the property's condition in response to an inquiry or referral to another broker or service provider.

Agency or Non-agency Listing Contract

Don't forget that while the transaction broker relationship is the initial relationship between licensees and the public and can occur by oral agreement, there may also be a written transaction broker agreement, either exclusive or non-exclusive, between a broker and a seller or a buyer. Many selling brokers in Kansas (especially those whose agents act as designated agents) pursue an exclusive transaction brokerage agreement with their own sellers and buyers.

Why? When a selling broker's agents act as designated agents, the broker is automatically thrown into the transaction broker position with those agents. Therefore, since he will end up as a transaction broker, why not just start out that way with his own business?

In addition to the definitions of the available brokerage relationships which the states require in the listing contracts, the seller and buyer client must affirmatively approve the brokerage relationships with the listing agent offers. For example, if the listing agent of

² KREC "Reporter" Newsletter, Summer 2004 published on www.accesskansas.org/krec/newsletters.html on September 21, 2004.

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the seller only offers designated seller's agency, designated buyer's agency, and transaction brokerage, those three relationships must be marked "yes" and all others must be marked "no."

The reason for this confirmation of what was discussed at the time the Broker Disclosure Brochure was presented is that the consumer must approve those relationships in "theory" at the time of the listing and then again they must approve the actual relationships in "fact" at the time of the real estate sale contract.

This is why a seller will approve transaction broker status in theory at the time of the listing and then will approve it in fact by signing the Transaction Broker Addendum prior to being presented an offer to purchase when the listing agent also represents the buyer making the offer.

Real Estate Sale Contract

The third brokerage relationship document is the real estate sale contract. Both Kansas and Missouri require two key confirmations or disclosures in real estate contracts. First, the sale contract must include verbiage confirming that the Broker Disclosure Brochure was presented to the consumer. (Exception: Kansas commercial contracts and leases do not require this confirmation because BRRETA does not require that the brochure be used in commercial transactions and multifamily residential transactions for properties with more than four units.) Secondly, the contract must clearly state the brokerage relationships between any and all licensees and the parties to the transaction, generally accomplished with an Agency Disclosure Addendum.

Transaction Brokerage Addendum

The last brokerage relationship document required by Kansas is the transaction brokerage addendum which must be included in the contract whenever the agent acts as a TB. This could occur when a seller's listing agent sells that property to a buyer client. In this event, the agent must provide a Transaction Brokerage Addendum and the buyer must sign it prior to signing an offer to purchase, and the seller must sign it prior to the presentation of the offer. The reason for presenting it prior to offer signing or offer presentation is that this addendum confirms that the agent is a transaction broker (the "in fact" disclosure as compared to the "in theory" approval given by the seller or buyer client in their listing contracts.)

Keep Agents' Actions and Files Correct and Complete!

Check licensees' files to be sure that all required documents have been fully executed and included. One of the best tools for checking file completeness and correctness is a Transaction File Checklist. Both the Kansas and Missouri Real Estate Commissions offer lists of items required in transaction files. These can be found on their respective web sites. In addition, a file checklist can be found in the accompanying materials which are a part of this course, located on [the author's web site \(www.CorkyHyatt.com\)](http://www.CorkyHyatt.com).

Help licensees keep their statements and actions in line with their brokerage relationships throughout the transaction.

One of the most damaging violations any licensee can make is to allow his statements or his actions to contradict his stated brokerage relationship. For example, the licensee has an active seller agency agreement (which by law requires that he keep the seller's confidences) and then states to the buyer that the seller must be moved immediately to keep his job secure. Clearly, this statement gives the buyer an advantage over the licensee's seller-client and is in conflict with the licensee's responsibilities to his seller-client! Reviewing scenarios such as the one described here can assist licensees, both newer and experienced, to keep their statements in line with their consumer-chosen and documented brokerage relationships.

Which Brokerage Relationships Do You Offer?

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Brokerage Relationship offerings are a company choice! Both Kansas and Missouri allow real estate firms to choose which relationships they will offer the public. However, no matter which relationships a firm offers, all licensees must present the Broker Disclosure Brochure to prospects at the earliest practical opportunity to allow consumers to make an educated decision! If licensees were allowed to only present the brokerage relationships which the firm offers, a consumer would not know "what she's missing!" Both states also allow the firm to include in the brochure which offerings the company makes.

In addition to the policies and procedures requirement, Missouri Statute 339.760 also requires the following:

"A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in Section 339.720."

Licensees learn all the legally defined and allowed brokerage relationships during their pre-license course and again in their continuing education courses. However, they must clearly understand which of these relationships they may offer under their company policy as well as how to perform each of the following responsibilities:



Present and explain all available relationships to seller or buyer prospects

Perhaps one of the most effective visual presentations of how brokerage relationships are allowed by law but not by all brokerages is the funnel diagram above. The top of the funnel (the largest part) represents all the brokerage relationships allowed by a particular state's laws or rules and regulations. Below the state-allowed relationships are the broker-allowed relationships. While these can only include those allowed by state license law, they may restrict the firm's offerings to only a selected number. Taking the visualization to the smallest part of the funnel, consider the licensee's options. While the licensee may not offer relationships that are either illegal in the state or not allowed by his broker, he may choose to restrict his or her relationship offerings to a smaller number. However, when presenting options to a consumer using the required Broker Disclosure Brochure, all the legal relationships for the state must be presented and the licensee must secure a client's agreement to limit those she offers to cooperating licensees.

For example, Missouri relationships include:

- | | |
|---|--|
| <ul style="list-style-type: none">• Seller single agency• Buyer single agency• Seller Designated Agency• Buyer Designated Agency | <ul style="list-style-type: none">• Sub-agency• Transaction Brokerage• Disclosed Dual Agency |
|---|--|

A Missouri **broker** might elect to offer seller Designated Agency, buyer Designated Agency, and transaction brokerage. However, a **licensee** in that broker's firm might be uncomfortable with transaction brokerage and so might elect to offer only seller Designated Agency and buyer Designated Agency. Note that the licensee cannot offer sub-agency if the broker elects to exclude that status from his company policy. The same is true for Kansas brokers and licensees with the exception that disclosed dual agency is not a legal relationship in Kansas.

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Brokerage Relationships and New Construction

A number of decisions need to be made when your associates list and sell new construction.

As a buyer's agent, what additional responsibility do I have when selling new construction as compared to resale properties?

When our firm represents a builder in a subdivision, utilizing a model home complex with daily associate presence, can we use Designated Agency?



What brokerage relationship works when listing all of a builder's properties?

If our firm does not allow model home project agents to represent buyers for the project's homes, how can we handle referring those buyers and the brokerage relationships referring creates?

Agents who sell new construction deal with different issues than they do in selling previously owned properties. In this section, we continue with the specific differences between new and resale contracting, including the following:

- Contract forms (New Construction Contracts, Builders Addenda, Builders Contracts)
- Loan programs accommodating longer closing periods and timing, (longer closing periods to accommodate construction)
- Allowances and extras, including when the buyer pays for excesses over allowances
- Delays caused by weather, city inspections, etc.
- Change Orders and the necessary paperwork
- Commissions paid on base price or final price including extras
- Understanding the motivations and preferences of builder sellers as compared to homeowner sellers

Contract Forms for New Construction:

When selling new construction, the best documents are those designed specifically for new homes. Why? All of the issues listed above point to the need for different contract forms. A real estate sale contract designed for resale properties simply doesn't accommodate these issues adequately for selling new.

New construction contracts facilitate agreement about these important issues, including the earnest money deposit, the warranty, delays and change orders, extras and overages, and so many more.

Therefore, when using a resale contract, a buyer's agent must be careful to include terms and conditions which protect the buyer. When using a new construction contract, buyers' agents must still protect the buyer because many new construction contract forms are "builders' contracts." (A builder's contract includes terms favoring the builder over the buyer.)

Loan Programs with Longer Closing Periods:

The standard resale contract deals with normal closing periods, from days to weeks. Generally, these resale contracts do not provide verbiage for extended closings and extra fees for these delayed settlement periods.

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In addition, the issues of (1) **whether construction commences before or after written loan approval** and (2) **additional construction-related loan approval conditions are not facilitated in resale contracts**. It is common for lenders who make new construction loans to add special conditions or fees for lengthy closings of six months or more. Today, it is not uncommon for build jobs to take more than a year from contract to completion.

As a buyer's agent, your associate must be sure that the contract facilitates a long loan commitment period with the accompanying fees or requirements.

Allowances, Changes & Extras, including when the buyer must pay

When building a new home (except for entry-level homes which do not allow customization other than paint colors, floor coverings, and minimal lighting choices), it is customary to have changes and extras with their accompanying costs. It is vital to include how these allowances, changes, and extras will be handled between the builder and the buyer. Allowances must be included in the real estate sale contract. In addition, be sure that all the "parts" of the allowance are included. For example, when there is a flooring allowance, be sure that it includes not only the cost of the flooring itself but also padding (for carpeting), installation, and sales taxes where applicable. Why? Whether your client is the builder-seller or the buyer, if these items are not spelled out, disagreements will occur. Buyers, when given \$15.00 per yard for carpeting, will spend \$15.00 for the carpeting and then will have to pay extra for padding, installation, and sales tax, making them "unhappy campers!" When the allowance clearly states that it includes the floor covering plus the normal extras, everyone understands and fewer arguments will arise. If your associate represents the buyer and does not educate him about what's included and the contract doesn't spell it out clearly, the buyer will feel that he was not well represented.

In addition to the correct contracting of these allowances, it is important to spell out when the buyer will pay for overages, i.e., the extra costs when they choose items above the allowances. Today, most builders require that those overages be paid at the time of selection. When your associates represent the builder-seller, the payment of overages at the time of selection protects the builder from buyers who make selections that are unusual, more expensive, and then do not close the sale. When this happens, the builder incurs the cost of the buyer's "over allowance" selections plus the cost of removing the flooring and lighting and the cost to replace them or provide allowances to a new purchaser.

To prevent problems, change orders must be in writing, including any extra costs and when those costs will be paid. Without written change orders, the buyer may come to closing and find a stack of extra charges which the builder claims relates to changes requested by the purchaser. On the other hand, the builder might make changes actually requested by the buyer, bill those to closing, and find a buyer who refuses to pay at closing because he claims that he did not request the changes! Both of these conflicts can be prevented by requiring written change orders, signed by both parties, in the new construction sale contract.

Delays caused by weather, city inspections, etc.

To prevent problems, be sure that your associates educate buyer clients about the normal delays that occur during construction. It is common for a new home to sit for a week or more without construction activities due to weather or to the wait for a required city or county inspection. Since most purchasers of new construction who live locally will "drive by" their new home each evening to check the progress, these delays can be upsetting if they were not prepared for normal delays!

Providing a booklet or a packet of information for buyer clients purchasing new construction that explains the process and its timing can save upsetting calls to broker/managers from angry buyers.

Commissions on the Base Price versus the Total Sale Price:

The normal paradigm for many builders sees the commission as being based on the initial price of the house being built. Most agents' paradigm includes a commission paid on the final sales price. Both are logical to that particular point of view. However, when licensees work with builders it is necessary to come to a meeting of the minds about how the commission will be paid. Hopefully, the listing contract with the builder states how the commission will be paid and that information is passed along to

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selling agents via the multiple listing service. It is smart for buyer's agents to clarify this issue at the time of contract if they have not been notified via the MLS data sheet.

Understanding the Motivations of Builder-Sellers and New Construction Buyers:

Most licensees spend the majority of their careers selling resale properties. They become accustomed to working with seller's equities. When they work with a builder, whether as the listing or selling agent, they forget that the builder is a business person with a profit margin. It is important to educate agents, especially when they represent the builder, that their fiduciary duties include protecting the builder's profit. Many agents assume that builders can pay for extras without regard to their cost basis. It is easy to alienate a builder-client by failing to respect their right to a profit from each sale. On the other side of the transaction, buyer agents need to educate buyers about the builder as a business person. Assisting a buyer in knowing what to offer and how to negotiate with a builder is part of a buyer agent's fiduciary duties. In each of these situations, you as a broker/manager can minimize or reduce your risk by educating your licensees about how to work with builder-clients, new home buyer clients, and the process of building new homes!

Brokerage Relationships & Office Procedures

Each firm chooses which brokerage relationships it will offer to the public, from those relationships allowed by state statute (license law plus rules and regulations). Once the decision has been made by the firm's leadership, the company's policies and procedures must be formulated in concert with the chosen relationships. Following creation or adoption of policies and procedures, each broker/manager must implement office procedures that support the policies/procedures and enforce the brokerage relationships offered.

The combinations of brokerage relationships offered can be large, so this course will only deal with the most common offerings:

- 1** Seller and Buyer Agency with Transaction Brokerage
- 2** Designated Seller and Buyer Agency with Transaction Brokerage
- 3** Either of the options listed above with no Transaction Brokerage

Let's look at the office procedures you must consider when using each of the three options.

One office procedure must occur no matter which option the firm chooses: training. To protect the firm as well as the clients and agents of the company, a thorough and ongoing training program must keep all associates up to date with brokerage relationships policies, procedures, license laws and rules/regulations. In addition, the training must include practical application, practice, and role-playing or other techniques which allow for agent participation. Lecture doesn't necessarily mean learning!

A Case of Brokerage Relationships: Seller and Buyer Agency with TB

Review of Option One: When a firm utilizes seller/buyer representation, all the associates in the firm become subagents of the seller or buyer whenever any agent takes a listing. Remember, the listing agreements must include permission for Transaction Brokerage for the firm to be able to do in-house transactions between clients of the firm.

When Joe Agent lists Mr. Smith's property, every agent in the firm represents Mr. Smith. Why? Jim Jones, broker owner of ABC Realty, holds the listing. It belongs to him; therefore, all of his agents automatically become subagents of the seller, Mr. Smith. When any ABC Realty agent sells the property to a buyer-customer, he or she represents the seller. Now Jane Smith, another agent of ABC Realty, lists Bob Zeller as a buyer client. Every agent of ABC Realty now represents Bob Zeller. If Bob Zeller purchases Mr. Smith's property, all of the agents in the firm become Transaction Brokers.

Office Procedure Reminders for The Case of Brokerage Relationships

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Because all agents represent all clients, all agents owe all fiduciary duties to all clients. Frequently, the most difficult fiduciary duties to keep are confidentiality and accounting, especially when the agent may not even know the client. For example, the agents are all aware that Mr. Smith has a serious medical condition which has caused him to sell his property. Even those agents who did not directly take the listing and do not know Mr. Smith must keep his confidences.

The difficulty comes when Sally Sommers, an agent of ABC Realty who doesn't personally know Mr. Smith, meets buyers at an open house who desire a house just like Mr. Smith's. Sally and the buyers hit it off well and enjoy working together. She shows them Mr. Smith's house and they like it. In the discussions, Sally tells "her" buyers, with whom she's developed a personal relationship but whom she does not represent, about Mr. Smith's medical condition. What has Sally done? She's become an Undisclosed Dual Agent through her actions and her statements to "her" buyers, leading them to believe that she represents them even though she doesn't. How could Sally prevent this? Sally could "list" these buyers, becoming their agent in fact as well as in statement/treatment. However, once Sally lists the buyers, all of the agents in the firm become Transaction Brokers (DDA or TB in MO).

Office Procedures for TB

Once the agents become Transaction Brokers, they are no longer the agents of either party. In practicality, they must not disclose any of the confidences, including the motivation of either party, any offers or counter offers made by either party, or the highest/lowest price a client will offer/accept. In Sally's situation with "her" buyers, she allowed personal involvement to override her legal brokerage relationship with the customers. She exposed confidential information. Therefore, even though all the agents in the firm represent all the firm's clients, it is probably best to limit casual conversation about clients' individual situations as well as access to listing and contract documents. Posting sale prices leads to such conversation, especially when a sale price has been posted and then the sale "flips" and doesn't close. It's human nature to slip in conversation and reveal confidential information, especially when there is no personal relationship with that seller or buyer.

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Changing Demographics Impact Real Estate Brokerage: Managing the New Licensee and Working with the New Consumer Profiles

Learn your own personality style and then learn how to work with the other styles:

One of the toughest jobs of all brokers is learning how to oversee, administer, and work with licensees and consumers of all personality styles. It is virtually impossible to fulfill all the management roles or “hats” you wear daily without a thorough understanding of personality styles, how individuals process information, and how they react to differing management styles.

A Short History of Personality Assessments:

Hippocrates, the father of medicine, is credited with identifying the nature of man’s “humors” or personality types:

- Sanguine, Choleric, Phlegmatic, and Melancholic.
- Scholars believe that he based his four personality types on the four bodily fluids or humors: black bile (melancholy), yellow bile (choleric), phlegm (phlegmatic), and blood (sanguine), which also corresponded to the four elements of earth, fire, water, and air and the four seasons of autumn (black bile), spring (blood), winter (phlegm), and summer (yellow bile).
- The ancients believed that the imbalance of these four fluids caused disease.

The most commonly used personality assessment tools today, especially within the real estate community include DISC, the Platinum Rule, and BOLT. Here’s the chart of the DISC characteristics.

<p align="center">High D’s (Dominance) Results, control oriented Direct Impatient, strong-willed QuickTakes Action</p>	<p align="center">Hi I’s (Influence) People-oriented Optimistic Recognition-seeking Expressive & outgoingEnthusiastic, energizing</p>
<p align="center">Hi S’s (Steadiness) Stable, predictable Deliberate Consistent Good listenerSympathetic</p>	<p align="center">Hi C’s (Conscientious) Analytical Accurate and orderly Deliberate Correct & quality oriented SystematicPlanners</p>

Communicate in Each Person’s Own Style & Generation!

- For the **Dominant** person, you will want to include executive summaries, bullet pointed key details, easy-to-find information that can be quickly reviewed; “executive” styling; bold.
- For the **Social/Influencer** person include color, interactivity, people-oriented materials; stylishly presented; recognition. Color flyers, web sites with flair.
- For the **Conscientious** person include accurate details, full explanations; honest and straightforward; correct information; quality. Charts and graphs.
- For the **Steadiness** person include information focused on security, dependability; remember their natural fear of change.

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Working with the Four Generations!

Generation	Impacts	Attitudes	Communication Style	Technology Preferences
The Silent Generation	Depression, WWII	Duty, Honor, Hard Work, Respect for rules	Formal communication styles	Telephone; Some use computers-more comfortable with written letters
Baby Boomers	Era of Safety, Prosperity	Rebelled against "hollow" society	Personal growth, achievement, political correctness	Learned computers but prefer conversation, especially telephone
Generation X	Social value upheavals	Tough, pragmatic, individualistic	Adaptive, balanced, most comfortable with casual communication	Emailers, internet for source information
Generation Y	Global political climate of unrest; immersed in technology since birth;	Grown up in increasingly diverse & multicultural society; In 2002 Census = 37.6% non-White.	Immersed in technology since birth! Family & group centered; more cell phone than personal communication.	Cell Phone-centric! Do everything through cell, texting, instant messaging, cell applications and internet thru cell phone

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Managing Licensee's Advertising and Promotion

Violations of license law can be many and varied when we consider the hundreds of types and venues our licensees use today for advertising and promotion!

First, let's look at license law on advertising:

86-3-7 Advertising³:

- a. 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).
- b. 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.
- c. 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. 58-3062(a)(1).
- d. 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. Violation of this section shall be deemed a violation of K.S.A. 58-3062(a)(1).

Let's consider a few of the major venues which your licensees will use to advertise, market, and promote themselves and their services and over which you must practice oversight!

- Print media
- Email, email newsletters
- Websites and internet marketing
- Social Networking and social networking sites
- Text and instant messaging
- Cell-phone marketing

³ (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1992 Supp. 58-3062(a)(1); effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-76-18, April 29, 1975; modified, L. 1976, ch. 332, May 1, 1976; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Dec. 20, 1993.)

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Overseeing Fair Housing & Advertising

While this course doesn't deal directly with fair housing, it is a vital area that requires broker supervision of advertising and promotion. Remember that it is illegal under Title VIII and its' amendments for advertising to express a preference, limitation, or exclusion that would limit the housing available to anyone in any of the protected classes listed below:

- race
- color
- religion
- sex
- national origin
- handicap
- familial status



Does your office advertising system check for violations of these fair housing requirements?

- Who checks agent-written advertisements?
- Does your staff know the requirements and restrictions of Fair Housing legislation?
- Do you use a list of forbidden words?
- What procedures do you have in place to catch agent-written advertisements that violate Fair Housing legislation?
- If these procedures and personnel are not in place, is it worth the risk? Have you checked the cost of violations?

"America is not like a blanket; one piece of unbroken cloth, the same color, the same texture, the same size. America is more like a quilt; many patches, many pieces, many colors, many sizes, all woven and held together by a common thread."

Reverend Jesse Jackson

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Common Violations & How to Avoid Them

Violation: Agents forget to renew their licenses!

Recently, brokers have been "written up" in real estate commission newsletters for lack of adequate agent license renewal supervision. For example: "[Broker] failed to supervise the activity of an affiliated salesperson by allowing the salesperson to perform licensed activities on an expired license." Kansas licenses renew in a staggered fashion by the first letter of the agent's last name. It is more difficult to follow than some other states' systems, such as Missouri's "all at once" approach. The schedule for license renewals is detailed on the following chart:

First Letter of Last Name	Renewal/Education Due Date	License Expiration Date
N, O, & P	1/31/Even	2/28/Even
Q & R	3/31/Even	4/30/Even
S	5/31/Even	6/30/Even
T, U & V	7/31/Even	8/31/Even
W, X, Y, Z, & A	9/30/Even	10/31/Even
B	11/30/Even	12/31/Even
C	1/31/Odd	2/28/Odd
D & E	3/31/Odd	4/30/Odd
F & G	5/31/Odd	6/30/Odd
H	7/31/Odd	8/31/Odd
I, J, K, & L	9/30/Odd	10/31/Odd
M	11/30/Odd	12/31/Odd

In order to easily track the renewal status of your licensees, create a tickler file in which your associates are listed alphabetically by their last name with the renewal date by which the Kansas Real Estate Commission must receive the following: (1) licensees' renewal forms, (2) payment of the appropriate fees, and (3) proof of continuing education requirement completion.

Develop a "Reminder" system that's hands free!

With all the pressure on your office staff, an automated system both saves employee time and stress and simplifies tracking your licensees' license status. One of the easiest systems uses a software tracking system such as Microsoft Outlook's "Task" reminders. Your office secretary or other appropriate staff person can set reminders for each license renewal deadline on his or her computer which will pop up reminders on the calendar. The staff person to whom you've delegated the responsibility to track agents' licenses can send reminders to agents prior to their renewal deadline and track receipt of their renewed licenses. Remember, education and license renewal must be completed on the last day of the month immediately preceding the license expiration date. Your associates generally look at the expiration date on their licenses and believe that renewals are due on that date. Because the actual deadline is one month earlier, their "last minute" tendencies can place them in danger of working without a license. It's far easier to track license deadlines than it is to deal with unlicensed associates listing and selling real estate!

License renewal requires twelve hours of continuing education which must include the following:

1 Salespersons

Twelve hours must include at least three mandatory or CORE hours and no more than nine hours of elective courses. The mandatory CORE course for salespersons is called the "Required Salesperson and Broker Core Course" and is coded with an "M" in the course number.

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2 Brokers

Twelve hours must include at least six hours of mandatory core courses, including the "Required Salesperson and Broker Core" (Course Code "M") and the "Required Broker Core" (Course Code "MB"), the course you are currently completing.

3 All Licensees

While continuing education schools are required to submit course rosters for each course offered, it is also the responsibility of each licensee, whether salesperson or broker, to keep copies of certificates to be able to prove completion of the twelve hours during each biannual renewal period. Some brokers maintain a copy of each completed course certificate in their associates' personnel files as a "back-up" file for their agents. Those firms with in-house education that has been approved for continuing education credit find it beneficial to keep a record of all certificates issued to their associates for the renewal period and to keep an archive of these certificates and rosters with their permanent records. Many "burn" copies to compact disks for permanent storage and easy retrieval of certificates and rosters.

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Exhibit Section

[Note: The following is copied for your convenience from the Kansas Real Estate Commission website at <http://www.kansas.gov/krec/audit.html>]

Examination by Real Estate Commission: When a representative of the Real Estate Commission arrives in your office to examine your records, he or she will ask for records for a specified period of time. The examiner will review transaction files and, if applicable, trust account records.

Transaction Files: Each transaction file whether PENDING, CLOSED OR CANCELED should contain all of the following records IF APPLICABLE to the transaction:

- agency agreement with seller
- agency agreement with buyer
- transaction broker addendum
- transaction brokerage agreement
- offers, counteroffers
- contract
- lot reservation agreement
- commercial lease
- option
- receipt for purchase agreement and earnest money
- closing statements
- authorization to disburse earnest money on transaction which did not close
- 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:

- deposit slips showing transaction number, date of deposit, amount and where deposited
- monthly trust account bank statement, canceled checks and deposit slips
- a check register which shows the chronological sequence in which funds are received and disbursed
 - for funds received: date of deposit, transaction number, amount
 - for disbursement: date, transaction number, payee, amount
 - the current balance
- 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
 - the current balance
- a ledger for broker's funds, if applicable

Reconciling Trust Account Records: Reconcile 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 by adding the balances of all ledgers. If ledgers are properly maintained and no errors are made, the total of all ledgers will be the 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.