

Corky Hyatt Seminars presents the 30-Hour Practice Course by Home Study  
**Textbook: Contract Workshop**

**Contracts Begin with Buyers!**



Many agents begin showing buyers properties at their first meeting. Why? Buyers want to look at properties!

Beginning with showings would be like a physician writing a prescription before diagnosing the patient's condition. Before showing and selling property to any buyer, diagnose the buyer's motivation first, then his wants, needs, and financing profile.

“Qualifying” a buyer includes determining the buyer's total situation not merely his financial ability to purchase. Many real estate licensees equate “qualifying” with checking a buyer's income, expenses, and credit history. However, these do not consider the most important determinant for a buyer's readiness to act, his motivation!

Utilize with a “diagnosing” script to determine when, where, why, and how the buyer wants and needs to purchase. Financially qualified purchasers may not be motivated to buy today. Don't waste his time and yours until you've determined whether he is ready to purchase.

Showing a buyer properties before qualifying him may create more disappointment, anxiety, and confusion than it creates a successful sale. Why? If a buyer looks at properties for which he can not qualify, he will never be satisfied with those that better suit his needs. If you test drive a Porsche and then qualify for a Chevrolet, the Chevrolet will be a disappointment. However, if you determine your qualification first, then drive the new Chevrolet, it's a sweeter experience!

Once you've determined that the buyer is a serious purchaser, arrange for his mortgage **pre-approval!** More than 90% of all home purchases in the U.S. involve financing. Therefore, the vast majority of your home-purchase prospects will require a new mortgage.

**What is the difference between pre-qualification and pre-approval?**

- Pre-qualification includes only the “numbers.” A buyer's monthly income and debt may appear to well qualify them for a particular property, but the picture is incomplete.
- Pre-approval includes both income and debt figures with credit history and court records. If a purchaser earns sufficient income to qualify and currently has limited debt but suffered a property foreclosure two years ago, he will probably not qualify for a new mortgage. His

**A Key Note!**



**Diagnose the Buyer's situation!**

- Determine the buyers' motivation
- Determine their needs and wants
- Ask questions in a supportive, non-threatening way
- Observe body language, voice inflections, reactions
- Listen carefully
- Take complete and accurate notes

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credit history challenges, while generally not that severe, may include a history of late payments. Lenders will not approve or will place additional conditions or requirements on a buyer's approval when these credit history problems exist. Court records indicating judgments and liens--such as tax liens or child support and alimony—limit buyer's approvability.

Because most of your buyer-side transactions today involve buyer representation, you must educate your buyer-clients to the benefits of written loan pre-approval prior to seeing any properties!

Many real estate business people and consumers state that **“Once a buyer has written loan pre-approval, they become a “nearly cash” buyer.”** In some respects this is true because the financing contingency in a real estate purchase contract is one of the most common “outs” a buyer has in the transaction. If the buyer does not receive approval by the lender of his, he may cancel the contract which was written contingent upon loan approval. However, even securing loan approval doesn't remove all the financing hurdles. An “approved” buyer still has to remain “approved” through closing. What does this mean? It means that the lender will generally recheck key information prior to closing to make sure that there have been no substantive changes in the buyer's financial or employment condition. For example, if a purchaser changes jobs between approval and closing, the lender will require a new approval process. If the property being purchased does not appraise for the purchase price, the lender may cancel the approval or add conditions which the buyer must meet to secure the loan. If the purchaser has a major lien filed by the IRS, the lender may cancel the approval. How can this happen? In all loan approvals, lenders include conditions which must be met prior to closing. Virtually 100% of home loan approvals include the condition that the property must appraise for the purchase price. If the buyer is selling another property and needs the cash or needs payoff of a previous mortgage, these actions will be required in the loan approval. Therefore, even a written loan approval does not truly make the purchaser the same as a “cash” buyer!

**Another Key Note!**



**Four Essential Qualification Questions!**

- How much do you earn and how can we verify that income?
- How much do you have available for down payment and closing costs and where are those funds today?
- What is your monthly debt?
- Is there anything in your credit history which could cause you challenges in being approved for a new mortgage?

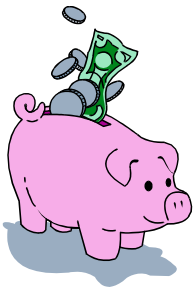
**Buyers benefit from loan pre-approval!**

Certainly, sellers feel more confident entering into a real estate sale contract with a lender-pre-approved purchaser. In addition, there are significant benefits to the purchaser for securing early approval!

- Pre-approval increases the buyer's chance to purchase!
- Pre-approval enhances the buyer's negotiating position thus possibly facilitating better purchase prices than non-approved buyers,

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- Pre-approval generates better contract terms than are available to non-approved buyers, and
- Pre-approval may securing the property when multiple offers are presented!



Why are these benefits available to a pre-approved buyer? Consider the seller's comfort level with a pre-approved buyer as opposed to a buyer whose offer is contingent upon an unknown lender approving the buyer using an unknown loan product with unknown income and credit challenges looming on the horizon. Additionally, when a seller negotiates with an approved purchaser, he may be more likely to accept either a lower purchase price or more buyer-favorable terms if he doesn't have to be concerned about a loan contingency! Certainly, when a seller is presented with multiple offers, the offers which provide loan pre-approval are far more attractive than those with a loan contingency!

### **Buyers, Real Estate Professionals, and the Loan Approval Process**

Many purchasers will contact you via email or phone to see a property without first meeting with a lender to secure loan approval. In this even, it will be part of your "qualifying" conversation to "diagnose" their situation. By interviewing them about their financing needs, the real estate professional will determine which lenders best suit the buyer's needs. To do this, you may wish to ask some of the following questions:

- Do you currently have a home loan or have you had a previous mortgage? (To determine what "education" they may require about the loan application, procession, and approval process)
- Are you a military veteran or on active duty? (To determine whether they might be a VA loan prospect)

On the other hand, purchasers may have secured some level of loan approval before you initially meet them. Many home buyers have become "approved" via an internet lender, even if they do not intend to place their loan with that lender. The online lenders make interactive qualifying worksheets readily available to buyer prospects. If you have not experimented with these sites, do a search such as [www.google.com](http://www.google.com) for home loans.

**The more questions you ask before showing properties, the more properties you will sell relative to the number of properties you show! Buyers appreciate your showing them only the properties which fit their wants, needs, and financial ability to buy.**

I once worked with a buyer who said that he would only look at one property because he traveled extensively for his business. He stated that if I showed him the right house, he would buy it. I did and he did! However, I invested conversations and time finding the one house to show him. We might all benefit by experiencing a "one house" buyer to teach us how to better "diagnose" our buyer-clients wants and needs **before we show them property!** Don't overlook questions that determine a buyer's motivation and readiness!

#### **More buyer questions!**

Asking questions takes control of the situation. Using scripts and dialogs improves your diagnosing abilities. You become a better listener when you have a printed list of questions from

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which to work! In fact, it's human nature to be thinking of what you're going to say next while the other person is speaking. When you use scripts and dialogs that determine what you'll say next, you can focus on listening to your prospects answers.



An old saying in the real estate business says “Cash or get out of my car!” If you limit your buyer prospects to only cash buyers, you'll have less than ten percent of the buying public as customers. Even limiting your prospects to cash or conventional mortgage purchasers costs large numbers of well-qualified purchasers. Government loan programs offer purchasers more flexibility, qualifying more buyers to purchase with your assistance.

Learn the benefits, terms, and conditions of as many types of financing as possible. The more types of financing you know, the more buyers you'll sell and sell well!

For example, not all conventional buyers have 20% or more available as down payment for their new purchase. Learn the terms and conditions of insured conventional loans as well as the variations of programs available both nationally and in your specific market place.

“Government” financing includes both loans **guaranteed** by the Department of Veterans Affairs and those **insured** by FHA (the Federal Housing Administration, a department of HUD (Housing and Urban Development)).

**More than 94% of all home purchases in the United States involve mortgage financing.** Unless your buyer-client has sufficient cash to pay for the property without mortgage financing or has secured a written loan approval from a lender, always ask these three questions of all buyers during your interview!

### **Sample Qualifying Questions: Motivation**

- How long have you been looking?
- Do you own or are you renting?
- Have you seen any home that you like?
- Why did you not purchase it?
- When is the best time to look?
- Do you need to sell your present home to buy?
- If we find the right home for you today, are you in a position to proceed today?

### **Sample Qualifying Questions: Work History & Income**

- Where are you employed? How long there?
- What is your position?
- What is your family's gross monthly income?
- What is your monthly debt?
- How much do you have to invest?
- Is there anything in your credit history that could be a challenge in securing a new loan?

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**Financing Alternatives: Conventional, Government (FHA & DVA), & More**

The “Financing Workshop” section of this text book, details the types of financing available to purchasers. In general, home buyers have three major alternatives:

1. Conventional loans (both insured and uninsured)
2. Government loans: FHA (Federal Housing Administration, a division of HUD)
3. Government loans: DVA (Department of Veterans Affairs, commonly referred to as VA)

**Real Estate Contract Terminology**

Once the financing decisions have been made and the buyer has selected the property they wish to buy, it's time to write the offer to purchase the property. Many real estate licensees and consumers refer to this document as a real estate contract. The form may be titled “Real Estate Sale Contract” but when the buyer and his agent initially complete the form, the document is not a contract! It is an offer to purchase! What is the difference? The following short lesson in real estate “terminology” differentiates these and other frequently misused terms.



**What is the difference between a “contract” and an “offer?” What’s “consideration?”**

- A contract is the resulting document from a “meeting of the minds” between a seller and buyer.
- An offer is the proposal of either the buyer or the seller to the other party and has been signed by only one party.
- “Parties” are the seller and the buyer. Licensees are not parties to the offer or contract unless they are personally selling or buying!
- “Consideration” includes the payment indicated in the contract, whether it is cash, financing, or something being traded for the property.
- An additional element of the consideration for an offer is the **EARNEST MONEY DEPOSIT!** Don’t forget that the earnest money deposit must be deposited within a certain time period! In Kansas, license law requires that the deposit be made within five business days. You can check requirements such as this on the KREC web site (<http://www.accesskansas.org/krec>)
  - “... in the purchase agreement. Fail to **deposit** any check or cash received as an **earnest money deposit** or as a **deposit** on the purchase of a lot within five business ...” [www.accesskansas.org/krec/rules\\_regs/58-3062.html](http://www.accesskansas.org/krec/rules_regs/58-3062.html)
  - In Missouri, the EMD must be deposited within 10 banking days. This information can be found on the MREC site (<http://www.ded.state.mo.us/regulatorylicensing/professionalregistration/restate/>).

**Remember that the Statute of Frauds states that all real estate contracts must be in writing to be enforceable!**

## How do “brokerage relationships” affect negotiating offers?

### **Brokerage relationships documentation:**

- The agency disclosure addendum describes the brokerage relationship of the agents working with or for the seller and the buyer.
- Be sure to include the agency disclosure addendum with each offer presented.



### **Agency & Negotiating:**

- As a buyer's or seller's agent, you can legally negotiate for your client.
- As a transaction broker you can not negotiate for the seller or buyer with whom you are working. (The same is true if you are working with the buyer as a sub-agent of the seller!)

### **Cancellation of a Contract:**

- A real estate sale contract is a **bilateral agreement**, meaning that it takes two parties to make and break a contract.
- If a **contingency** in the contract can not be successfully removed, the contract clarifies the steps to cancel or the automatic cancellation of the agreement. In addition, the contract specifies what happens to the Earnest Money Deposit if the contract cancels.
- **To cancel a contract**, either party notifies the other party

of their desire to cancel, negotiates the cancellation, and secures the agreement to cancel. If the second party does not wish to cancel and the differences can not be negotiated, legal counsel, an arbitrator, or a mediator may be hired to settle the issue.

**Don't forget to include** in the contract itself the disclosure that you are a real estate licensee in the State of Kansas! Even if the buying or selling entity is a partnership or corporation, state that a member of the buying/selling entity is a real estate licensee in the State of Kansas!

*Note: Be sure to check whether E&O (Errors and Omissions) Insurance covers you when you list your own property for sale! Many E&O companies don't!*

Here is a list of the situations that legally terminate a real estate offer. Be sure that both parties to the “offer” understand what actions terminate their offer or the other parties offer! A lack of understanding about offer termination has caused many controversies between sellers, buyers, and the licensees involved in the potential transaction!

### **How do you complete an offer to purchase?**

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<sup>1</sup> Ask your broker if he or your board provide a “key” to your contract forms which explains all the clauses and contingencies it includes. These “keys” can be very helpful in learning the forms and how to use them. Many

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- Before you ever put yourself in the situation of writing an offer to purchase with a qualified purchaser, **learn your contract forms both “right side up” and “upside down!”**
  - First, learn them “right side up,” in other words learn every portion, clause, and contingency of your contract forms so well that you can confidently and competently explain them to a purchaser. Your explanations are not legal opinions because only an attorney can give legal opinions of the contract form. Your explanations are simple, straightforward statements of what each clause or contingency means in layman’s terms. Then learn it “upside down” so that you can explain it to the purchase sitting across the table from you!
  - When new forms are provided for your use, it is wise to take some time to thoroughly read the form, highlighting any clauses that raise questions in your mind. Then take the highlighted passages to your broker for explanation. If she is not clear about the new verbiage, she will contact the board or the attorney who prepared the form for clarification.
  - Learn the choices your purchase has with regard to each major issue of the contract form:
    - **Purchasers:** Ask the purchaser in what name(s) they plan to buy the property, i.e. what are their “legal” names not their nicknames or part of their legal names. Next, determine what “person” each buyer is at law, i.e. a single person, husband and wife, a Kansas corporation, a partnership, and so forth. This must be entered on the “Name” line after the names. Most contract instructors suggest that you enter each name separately. Therefore, instead of “Jim D. and Mary E. Jones” you would print Jim D. Jones and Mary E. Jones, Husband and Wife.” Jim and Mary might also be “Jim D. Jones, a single person, and Mary E. Jones, a single person” because they are brother and sister or father and daughter.
    - **Earnest money deposits:** While earnest money deposits or EMD’s are not required, few if any sellers would accept an offer without a good faith deposit of funds illustrating that the buyer is serious about his or her offer. A very small EMD shows lack of commitment by a buyer and puts him or her at a disadvantage in the eyes of the seller, especially if there are multiple offers!
      - EMD’s can be cash, check, note, personal property, or letter of credit, just to name the main options.
      - Instruct the purchaser to make the EMD check payable to the party listed on the multiple listing data sheet. If no instruction is given, it is generally acceptable to make the check out to the listing firm. If you are writing an offer for a buyer client to purchase an unlisted property, the check may be made out to your firm (if your firm uses a Trust Account) or to the firm’s choice of title or escrow firm.



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companies and boards have classes whenever new contracts and related forms are published. It is wise to take these classes to keep abreast of contract changes!

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- Don't forget to counsel the purchaser that the EMD check is cashed immediately. Some people are not as experienced with the process as you and may believe that the check is simply held until closing.
- Your real estate sale contract form describes what happens to the EMD in the event that the sale does not close. Generally, the following three options are included:
  - The earnest money will be refunded to the purchaser upon written instructions of the buyer and seller.
  - The earnest money will be paid to the seller upon written instruction by the buyer and seller.
  - The earnest money will be turned over to a court of competent jurisdiction when agreement can not be reached between the buyer and the seller. If the contract does not state this third option and the buyer and seller can not agree, then the EMD can not be removed from the Trust Account or paid out by the escrow or title firm!
- Can buyer expenses, such as an appraisal fee, be paid out of the earnest money deposit? Yes, buyer expenses such as the appraisal fee can be paid out of the EMD but only when that action is approved in writing by both seller and buyer. Remember, the EMD is security to the seller that the buyer intends to close!
- **Purchase Price:** The price which the purchaser chooses to offer is his choice; however, you have the obligation to provide the buyer with the best information to make that choice. In fact, if the buyer is your client [you have a written buyer agency contract], you must provide him with a comparative market analysis for the property so that he can make an educated decision about his offering price. Remember that representing the buyer does not mean counseling him to make a low offer. In a "hot" market, your best advice may be to offer full price or even more than full price [or sweeten other terms of the offer such as a larger EMD, flexible closing date, or fewer/if any seller concessions!].
- **Closing/Possession Dates:** Be sure to check that the closing date is not a weekend date. Make sure that there is time between the closing and possession to accommodate the needs of your purchaser and the seller. A full price offer might be turned down if the closing and possession are the same day because the seller probably doesn't want to move out of the property until she knows that the buyer has closed and the closing documents have been recorded at the court house!
- **Inspections:** Counsel the buyer that a full spectrum of inspections, at his expense, simply assure him that the property is as he believes it to be. If the buyer questions the inspections being his expense, remind him that he wouldn't want the seller to pay for these inspections because they could be "as instructed" inspections, i.e. purchased opinions favorable to the seller. By having the inspections buyer-paid, the inspector is an unbiased, qualified third party. Also,



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remind him that most contracts (check yours!) require that a professional inspector perform these inspections, not his Uncle Harry (unless Uncle Harry is a professional inspector).

- **Financing Contingency Form<sup>2</sup>**: As described earlier, hopefully the purchaser will have his or her financing in place, i.e. approved in writing, before the writing of the offer to purchase. If not, a contingency for financing will be included on the contract form. Another reason for pre-approval is that the best type of financing for the purchaser can best be determined by qualified, experienced lending professionals. Most real estate contract forms today have separate addenda for the various types of financing, specifically the following:
  - Conventional
  - Government (FHA & VA)
  - Seller Financing
- **Other Contingencies?** Remember that whenever you include a contingency in the real estate purchase offer, you must state it fully, in other words closing the loop!
  - For example, some untrained licensees state a contingency as follows:
    - “Subject to wife’s approval”
  - This statement does not close the loop. It is incomplete. A better way to state this contingency would be as follows:
    - “This offer shall be contingent upon approved by Jane D. White no later than June 21, 2007. In the event that Mrs. White does not approve, this contract shall be cancelled and the earnest money deposit shall be returned to the purchaser.” Once this has become part of a real estate sale contract, it must be “satisfied” or removed in writing no later than the deadline stated in your contingency or the purchaser will have lost the ability to cancel the contract on this basis.



### **What are the possible consequences of a breach of contract?**

- The seller may ask to retain the earnest money deposit rather than allow it to be refunded to the buyer who breaches the contract.

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<sup>2</sup> Unfortunately, you may encounter a purchaser who wants to write a “second” contract that will be used only for the lender. Writing such an offer is generally intended to keep the lender from knowing the actual terms of the contract and is, therefore, fraudulent. You can not be party to this type of fraudulent act and you must explain that to the purchaser. If the buyer insists and is your buyer client, immediately speak with your broker to determine what action to take. Your broker may choose to cancel the buyer agency contract to protect you and your firm from the liability this type of intentional misrepresentation causes!

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- The seller may sue for “**specific performance**” to force the buyer to complete the purchase. (Note please that they can not sell the house to another purchaser while suing the first buyer for specific performance!)

**Suggesting that the seller or buyer consult a professional:**

- Whenever the seller or buyer asks, “Should I consult an attorney (accountant, engineer, etc.)”, the best answer is YES! The fact that they have raised the issue guides you to the affirmative answer. However, suggest that they contact a real estate attorney! They should not have to pay to “educate” the attorney!
- Other questions that indicate that they need legal counsel include: “*Should the title be in my wife’s name rather than mine?*” or “*What are my earnest money rights when I cancel this contract?*” You may point out the language in the contract which deals with the questions, but legal counsel is required to explain their “rights” and important issues such as how best to take title, which ownership form best suits their particular situation, etc.



**What disclosures must be included in a real estate sale contract that deal with your firm?**

If your company has affiliations with or receives fees or commissions from an affiliated firm for transaction related services, that affiliation must be stated in the contract and approved through their signatures by the seller and buyer. Your firm will provide you with the proper forms for this disclosure. If you do not have the property addendum, ask your broker!

Affiliations which must be disclosed include company owned lending, title and escrow, inspection, and other transaction-related services.

If your office does not prepare a “sale packet” of forms for your use, you must prepare these packets yourself. Even if your office does provide seller and buyer packets, you may need to supplement the office forms with additional information.

Always keep up-to-date forms in your packets, being sure that whenever forms change you update your supply! **DO NOT USE OUTDATED FORMS**, even if you have purchased these at your expense and do not want to waste your purchase price! Once forms have been replaced, the new forms satisfy current legal requirements and solve legal issues with old forms. Use only current, legally approved contract forms. When in doubt, speak with your broker and use only the forms approved for your use by your broker!

**Negotiating Contracts**

Effective negotiating includes good preparation! Follow these steps in preparing and negotiating any offer to purchase, whether representing the seller or the buyer or neither:

1. Make sure that your offer is fully completed and fully executed (signed) by the party whom you represent (client level service) or with whom you are working (customer or non-client level service)

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2. Interview the agent working for or with the other party, who frequently will be a cooperating agent with another company. Determine, if possible, the motivation level of the other party and the most important terms of the offer to that other party.
3. When representing the seller, attempt to discern why the buyer chose this particular property and what negotiating strategy the buyer favors. Some purchasers make one offer and, if they can't purchase the property on their initial price and terms, will go on to another property. On the other hand, some buyers like to negotiate, making a lower offer with full intention of paying more or agreeing to other terms when the seller counters their offer. The buyer's agent is the best source of this information if he or she is willing to share it.
4. As the seller's agent, be sure to determine the buyer's ability to purchase (financial ability being the most frequent contingency.) If the buyer has a written pre-approval with few conditions, this gives the seller assurance that the buyer will close on the sale. However, if the buyer is not pre-approved or has a weak pre-approval with a long list of conditions, the seller has less security and may require other means of building comfort, i.e. a larger earnest money deposit or more favorable terms in other parts of the offer.
5. When representing the buyer, attempt to ascertain the seller's motives and strategies if possible from the listing agent. When the buyer's pre-approval letter gives too much information, i.e. approving him for a higher loan amount than necessary for his original offer, do not over-play his hand. As the loan officer to provide a pre-approval letter for that specific offer. Loan officers will work with the buyer in this situation, especially with their ability to email approval letters.

### **Analyzing the Offer!**

When you represent the seller, be sure to analyze the purchaser's offer before presenting it to your clients!

The major elements of concern include the following:

- Is the offer written on a standard company or board form?
- If not, what can you do? If the offer is presented on an out-of-date form, an attorney-generated form, or a form from another area of the state or country, discuss the situation with your seller client. They may (1) instruct you to return the offer to the buyer's agent to be written on a standard form; (2) take the offer to their attorney for legal advice; or (3) they may elect to counter on a standard form.
- Next, review the showing activity from your records or your company's coop records. It is essential to know what is happening in the market place before presenting the offer. Based on the number of sales in the area, this may be an excellent offer or a poor offer. If there have been no sales, the seller may be lucky to get this one, but if there have been many sales, perhaps the offer doesn't represent the strengthening in the market place.
- Prepare an updated CMA (comparative market analysis) to determine whether "market value" has changed since the CMA presented at the time you listed the property. Note particularly the list price to sale price ratio of recent sales. Also review how many month's inventory is being added to and removed from the market each month. For example, if 100 properties are listed each month in the seller's area and 100 sell each month, only one month's inventory is being listed each month. However, if 100 properties are listed each month and only 25 sell, then four month's inventory is being added to the market each

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month. The 4 to 1 ratio tells you that you have a slower market than the 100 to 100 or even a 100 to 50 ratio!

### **More Preparation for Presenting the Offer!**



In order to determine whether the offer allows the sellers to achieve their goals for listing the property, you will prepare an updated Seller's Net Sheet. You prepared an initial net sheet at the time of the listing, based on your projected sale price and illustrating generic closing costs.

Now that an offer has been received, you will prepare a specific net sheet for that offer, including all the terms and conditions of the offer. Be sure to secure the appropriate closing costs from information provided by your broker and by local title or escrow firms, such as the title policy, closing fees, etc. Also, estimate the repairs that will be required by the buyer's inspections and include a "worst case" scenario for your seller client. They will be pleased with your estimate if their final costs are lower than you estimated and their net proceeds higher. However, if you estimate their costs low and their proceeds high, they will not be pleased!

### **Presenting the Offer:**

Begin by setting the "ground rules" for the offer presentation to your seller clients (the same holds true for presenting counter-offers to your buyer client!).

- Clarify that you will present the entire offer (the good, the bad, and the ugly!) in its entirety before you discuss any part of it.
- Once you've reviewed the whole offer with your clients, ask them for the items to which they object, specifying and listing them as you go. Still, don't negotiate! Once you've identified their objections, isolate them. Isolating means clarifying that there are only these specific objections. Generally these objections fall into the following categories:
  - Price & terms
  - Personal property
  - Possession (closing & occupancy)

Note that all the objections are "P" words! However, in 99% of the situations, it all comes down to price! If the price is right, the terms, personal property, closing and possession can be accepted!

### **Establish Common Ground!**

Whenever you meet with your clients, especially your seller clients whom you may not have seen for some time, re-establish your rapport with them by discussing their lives and interests, their situation, and their goals for the sale!

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As you begin the process of negotiating offers and counter offers, don't forget to "humanize" the other party, establishing whatever common ground exists between the seller and the buyer:

- ❑ What do the buyers like best about the property? (Few sellers fail to be impressed with the buyer's appreciation of their home!)
- ❑ Symbolically introduce the parties to each other, even if they've never met and they probably haven't! Let each party know a little about the other party, their family, their careers, their interests. Common interests, hobbies, work can allow the parties to see the other side as people rather than as adversaries or merely signatures on a cold contract form.
- ❑ Always remember to review the client's motives as you discuss the offers and counter offers. They are more likely to "give" a little if doing so facilitates accomplishing their ultimate goals for the move!

### **Secure agreement!**

In presenting an offer, use the best facts and figures available so that your client can make an educated decision!

Begin with the seller's net statement prepared for this offer. Does it net the seller within his acceptable range of proceeds? (Based on your listing net sheet estimates?)



Has the CMA showed a change in the market? Have properties comparable to your seller's home sold for less than you found at the time of listing?

Remember that it is always easier to secure small agreements, such as securing agreement about the personal property, the possession, and the warranty instead of starting with the price. Once the small agreements have been made, the whole is easier to handle!

### **"Feel, Felt, & Found"**

One of the most effective negotiating strategies is called "feel, felt, and found." It works as follows:

1. Mr. and Mrs. Seller, I understand how you feel about the buyer's low offer. It's less than we anticipated based on our CMA. However, they like your home well enough to take the time to make an offer which is more than the other "lookers" have done!
2. Other sellers I've represented have felt exactly the same when a low offer was made. They've generally decided to make a counter offer at an acceptable price point and on acceptable terms.
3. What they've found is that many buyers will "test the market" by making a lower offer and then raise their offer, sometimes even to the list price or above it! These buyers just need to try a lower price so that they're sure they've not left any dollars on the table.

Lastly, always be sure that your seller (or buyer, when presenting counter offers) understands their three main options:

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1. Accept the offer (or counter offer) and the property is sold/bought!
2. Reject the offer or counter offer and it is terminated!
3. Counter offer by accepting some terms and changing others (also remember that counter offering also terminates the previous offer and the party may not “go back and take their initial offer” once they have countered!)

***In conclusion, “win-win” negotiations, which make both parties feel that they have succeeded, are far more likely to close smoothly than negotiations which leave one party feeling strongly that they lost!***

**Before you counter, understand the risks!**

Don't allow your clients to counter frivolously! Making a counter offer actually terminates the buyer's initial offer! Once the seller counters, the buyer's offer is legally dead! Many sellers think that they can counter and, if the buyer's don't accept the counter, revert to the purchaser's original offer and have a sale. You must explain the dangers of countering before you allow them to take that course. If, once they understand the risks, the seller's or buyers still need to counter, they're doing so with a clear understanding of the dangers.



Ask if they really want to “buy their house back” for...

- \$500, or
- Two more days before possession after closing, or
- \$350 of FHA-required closing costs, or
- A termite treatment?

Remember also that buyers frequently go to bed excited about buying a new home and wake up – sometimes at 3:30 am – with a serious case of “buyer's remorse!” (Fear!) A speaker once stated that fear stands for false evidence appearing real. If you prepare your buyer

clients for “buyer's remorse” they are far less likely to be swayed away from a good contract or a good property by an irrational fear. If your buyer clients have negotiated a win-win contract but haven't signed the written agreement, it's best to get their signatures before they have the opportunity to “sleep on it” and suffer from remorse. The same is true of sellers who may change their minds over night as well.

**“Contract Through Closing” Forms Section:**

One excellent lesson regarding your contract and closing forms is that you know them “upside down!” What this means is that you are able to discuss and explain the key elements of the real estate contract when you are sitting across the table from your customers or clients. They do not want to work with an agent who stumbles and fumbles about the key documents! Learn your contract forms and the closing forms as well. Get copies of sample closing documents from your office or from a title or escrow firm. They're happy to provide you a sample forms packet; because

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your knowledge of these crucial forms makes closings go more smoothly for them as well as for you!

The following forms are attached to this chapter as samples only. These forms are published by the Kansas City Regional Association of REALTORS® for the use of its members. These forms may not be sued by anyone who is not a member of KCRAR without the express written permission of KCRAR.

Heartland MLS | Seller Net Page 1 of 2

**Estimate of Seller Net**

Profile Information:  
Agent ID: \_\_\_\_\_ Profile Name: Mr. & Mrs. Sam Seller  
Sale Price: 200000 Financed Amount: 100000  
Term of Loan: 30 Interest Rate: 6.5  
Type of Loan: Conventional Loan Program: Fixed  
LTV: 50

Seller Trust Information:  
Present Mfg Balance: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ Prepay Penalty: \_\_\_\_\_  
Second Mfg Balance: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ Prepay Penalty: \_\_\_\_\_  
Third Mfg Balance: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ Prepay Penalty: \_\_\_\_\_  
Other Liens Amt: \_\_\_\_\_

Est. Items to be Paid:  
Interest 30 days: 0 Tax Proration: Closing Month # 0  
Est. Items to be Paid: 0

Estimated Settlement Costs:  
Recording Fee: \$5  
Home Warranty: \$ \_\_\_\_\_  
Escrow Fee: \$200  
Buyer's Origination Fee: \$ \_\_\_\_\_  
Appraisal Fee: \$ \_\_\_\_\_  
Mortgage Survey Fee: \$ \_\_\_\_\_  
State Survey Fee: \$ \_\_\_\_\_  
Other Inspection: \$ \_\_\_\_\_

RE Brokerage Fee: \_\_\_\_\_  
Title Insurance: \$50  
Discount Points: \$ \_\_\_\_\_  
Credit Report: \$ \_\_\_\_\_  
Administrative Fee: \$ \_\_\_\_\_  
Mechanical Inspection: \$ \_\_\_\_\_  
Flood Certification Fee: \$ \_\_\_\_\_

Estimated Settlement Costs: 1063  
Est. Settlement Costs: 1063  
Plus Misc Costs: \_\_\_\_\_  
Est. Net Settlement Costs: 1063  
Gross Equity Less Cost: 19937  
Less Owner Carry Amount: 0

http://www.heartlandmlsweb.com/fin/seller\_net.asp?spcode=Print&profileName=Mr%20%26%20... 5/9/2007

1. **Buyer Agency Contract (Exclusive)**<sup>3</sup> This is your listing contract with the buyer, which may be either exclusive or non-exclusive. However, only the exclusive buyer agency contract is attached to this course.
2. **Agency Disclosure Addendum** to a Residential Real Estate Sale Contract
3. **Residential Real Estate Sale Contract**
4. **Seller's Estimated Sale Proceeds**<sup>4</sup>: Kansas license law as quoted below requires that all licensees provide the seller with an estimate of proceeds at the time the offer is

presented. It is wise to present an estimate of sale proceeds at the time of listing because it is difficult for any seller to determine how much he or she will actually net from their sale without these figures. The public does not have knowledge of closing costs, not only because they do not close transactions regularly but also because these costs are fluid and change frequently!

5. **Buyer's Estimated Costs**<sup>2</sup> In like manner, Kansas license law requires that licensees prepare and present an estimate of costs to a buyer at the time the offer is made. Like the seller, the buyer can not make an educated decision about his or her offer to purchase a property without knowing the full and complete cost of the sale, including his full monthly payment including principle, interest, taxes, insurance, and mortgage insurance if applicable.

**How can you determine the seller's estimated proceeds and the buyer's estimated costs?**

<sup>3</sup> In this course, we use only the Exclusive Buyer Agency Contract form. Your firm or your Board of REALTORS® provides forms for you to use with buyer clients or buyer customers. If your firm approves of the practice, you may use a non-exclusive buyer agency contract. However, if your contract is non-exclusive or "open," remember that the buyer has no legal responsibility to work with you or purchase through you. You may do all the work and receive no benefit. In addition, the consumer is neither "represented" nor protected in an open agreement as they are in an exclusive buyer agency contract. Discuss this with your broker/owner or broker/manager if you have questions about the differences and the uses of these forms.

<sup>4</sup> K. S. A. 58-3062. Prohibited acts. (a) No licensee, whether acting as an agent, transaction broker or a principal, shall (17) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

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In order to complete the seller's estimate of proceeds and the buyer's estimated closing costs, you will need to research these costs in your specific market area and base these estimates on the sale price of this subject property. Costs vary from area to area and the party who pays each cost varies as well. For example, in some markets the Title Policy costs are born by the seller only, in some by the buyer only, and in some areas the seller pays for the Title Policy and the buyer pays for the Lender's Policy.

The best sources of estimated closing costs are your broker, experienced fellow licensees, or a lender or title company representative. The following example of closing costs for a transaction of \$200,000 is simply an example. Do not use these costs for your transactions but research the costs in your market. Also remember to check each HUD Settlement Statement following each closed transaction to see if costs have changed. Most lenders, title and escrow firms, appraisers, etc. do not notify you of increases in their prices!

### SELLER'S ESTIMATE OF NET PROCEEDS:

|     |   |   |
|-----|---|---|
| 1.  | Sale Price:                             | \$200,000   |
| 2.  | Loan:                                   | \$180,000 @ 6.5% for 30 years                         |
| 3.  | Down Payment:                           | \$20,000 (10%)  |
| 4.  | Seller's Fee:                           | \$55.00 Recording Fee                                 |
| 5.  | Seller's Fee:                           | \$200.00 Escrow Fee                                   |
| 6.  | Seller's Fee:                           | \$14,000.00 <sup>5</sup>                              |
| 7.  | Seller's Fee:                           | \$808.00 (Title Insurance Policy –<br>Owner's Policy) |
| 8.  | Total Seller's Costs:                   | \$15,063.00   |
| 9.  | Loan Payoff (Seller's Mortgage)         | \$134,000.00  |
| 10. | <b>Seller's Estimated Net Proceeds:</b> | <b>\$50,937.00</b>                                    |

### BUYER'S ESTIMATED CLOSING COSTS:

|     |                                |  |
|-----|--------------------------------|--|
| 1.  | Sale Price:                    | \$200,000                                    |
| 2.  | Loan:                          | \$180,000 @ 6.5% for 30 years                |
| 3.  | Down Payment:                  | \$20,000 (10% Down Payment)                  |
| 4.  | Buyer's Cost:                  | \$50.00 Credit Reporting Fee                 |
| 5.  | Buyer's Cost:                  | \$300.00 Appraisal Fee                       |
| 6.  | Buyer's Cost:                  | \$75.00 Tax Service Fee                      |
| 7.  | Buyer's Cost:                  | \$65.00 Pest Inspection                      |
| 8.  | Buyer's Cost:                  | \$175.00 Lender's Title Policy               |
| 9.  | Buyer's Cost:                  | \$55.00 Recording Fee                        |
| 10. | Buyer's Cost:                  | \$200.00 Escrow Fee                          |
| 11. | Buyer's Cost:                  | \$125.00 Mortgage Survey Fee                 |
| 12. | Buyer's Cost:                  | \$25.00 Flood Certification Fee              |
| 13. | Buyer's Reserve Costs:         | \$875.00 (3 month's tax reserves)            |
| 14. | Buyer's Reserve Costs:         | \$756.00 (Hazard Insurance reserves)         |
| 15. | Buyer's Reserve Costs:         | \$78.00 (PMI/MIP Reserves – 1 month)         |
| 16. | Buyer's Reserve Costs:         | \$962.00 (30 days interest/prepaid interest) |
| 17. | Estimated Buyer's Total Costs: | \$4,400.00                                   |
| 18. | Plus Down Payment:             | \$20,000                                     |
| 19. | Minus Earnest Money Dep.       | \$(5,000.00)                                 |
| 20. | <b>Total Cash to Close:</b>    | <b>\$19,409.00</b>                           |

<sup>5</sup> This number represents a 7% Commission, just as an example. Remember all real estate commissions and commission rates are negotiable! The rate you charge is set by your broker/owner and not by any group outside your firm.

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**The Preliminary Title Report:**

**The PTR or preliminary title report** provides both the buyer and seller with important information about each of their ability to close the transaction as well as the challenges which must be handled before they can close. When the PTR is presented to the seller and buyer by the title company, you must read the report and review it with your client. You may need to secure their cooperation in handling any conditions. The buyer has the right, under most contract forms, to raise objections within a specified time frame which the seller must then solve prior to closing. In the event that the seller can not solve these issues prior to closing, your contract dictates what happens. In some cases, the closing may be extended with the agreement of both parties. In some contracts, once the buyer has raised objections and the seller can not cure them, the transaction is voided. Be sure to read your contract form to see what options each party has under it. Remember that these terms can be negotiated by the parties and a different set of rules may apply to title issues. Also understand that some consumers think that title issues provide an “out” for the buyer. Most contract forms in this area do not provide an “out” but allow the seller to remedy the problems and continue to close the sale.



**What are the important facts about the PTR?**

- ☑ Who orders it? (Generally the listing company secretary does this or the listing agent himself.)
- ☑ When will you receive it? (Generally ten days to two weeks after it is ordered. May be later in a very busy market.)
- ☑ Who receives copies? (Generally one copy goes to the listing and selling companies as well as to the seller and the buyer. The recipients are listed in the PTR, so check to make sure that your client received their copy. If they didn't, be sure to get them a copy!)
- ☑ What needs to be reviewed? Schedule A lists the facts of the closing including the names of the parties, the address of the property, and frequently the legal description as well as the type of title being transferred, i.e. fee simple or life estate. Schedule B has two parts, the exceptions and the exclusions. The exceptions must be handled before the sale can close and the title policies can be written. This is your job to be sure that all the exceptions are handled



by the appropriate parties, whether that is the seller, the title company, the buyer, or another party. The exclusions mere state the fact that these items will be excluded from the coverage of the policy. Check to make sure that there are no frivolous or unusual exclusions. If there are, discuss them with your broker, then your client, and then the title company. Remember that your job is to protect the interest of your client, whether seller or buyer. Protecting your client includes making sure that any challenges in the PTR are handled in a timely fashion so that they don't hold up or prevent the closing of the sale.

Attached to your course outline is a sample PTR prepared by Bill Perry of First American Title (formerly Security Land Title) in Overland Park, Kansas. It is what we affectionately call the “PTR from Hell” because it incorporates most of the possible title defects you might find in your seller's preliminary title report. Although it is prepared with “tongue in cheek” it does point out situations which you might find in more ordinary situations! In most PTR's the sections include Schedule A which lists all

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the “facts” about the property, the seller and the buyer. Schedule B-1 lists all the conditions which must be solved prior to closing. Schedule B-2 lists the exclusions which are not insured.

**Closing the Transaction:**

The last processing details include coordinating the closing itself. Here are the details which must be handled for a smooth closing to occur:

- ☑ Determine who is going to do the actual closing (the Closer and the Firm).
- ☑ Where will it happen? (Physical address so that you can coordinate the buyers arriving on time!)
- ☑ When will the seller sign their “papers” such as the deed, affidavit, and HUD Settlement Statement?
- ☑ When will it be recorded? (Remember, no funds are released until it is file including the seller’s proceeds.)
- ☑ Is there a rush to close subsequent transactions? If so, the closers for each transaction must be told



well in advance so that they can expedite the recording and release of proceeds.

- ☑ In the event of a rushed recording, will they allow you to take the documents to the court house to their closing agent there?

Call each person involved in the closing and then inform your client about the details. The HUD Settlement Statement or closing statement details all the expenses and credits of both the seller and the buyer.

The preparer must balance the monies so that both parties are charged with all their expenses and are credited with all their proceeds.

Read the HUD prior to closing and check it against the contract to make sure that everything is charge and credited correctly. If it isn't, correcting the mistakes prior to closing is far superior to doing it during the closing with clients present!

A resource for sellers and buyers concerning the HUD Settlement Statement is the HUD site, [www.hud.gov](http://www.hud.gov) which includes an excellent description of the HUD form and what each line means to the parties.

Once the transaction has closed, secure a copy of the HUD and use it as an excellent and very helpful mailing to your client after the first of the following year. It will be necessary for their tax preparation! By scanning your HUD Settlement Statements and storing them with the clients other information, you can email the HUD with your New Year's greetings to your clients! You might also ask if your HUD forms are available by email from the closers to save your scanning time! Closing gifts or thank you notes are a matter of choice for each agent. If you use closing gifts, making them promotional tools can be a win-win for you and your clients! Establish a post-closing follow-through system such as the one described here. Be in touch to be helpful and to secure referrals from satisfied clients.

As you complete the contract and negotiation process, remember to include all the required agency or brokerage relationship documents in the contract.

1. The broker disclosure brochure must be presented to the potential clients, seller and buyer, at the first practical opportunity and prior to discussing personal information.
2. The agency agreements, the seller's listing contract must be signed prior to performing any acts that require licensure and represent the seller, such as offering the property for sale to anyone! Many agents practice “pocket listing” when friends or past clients say “I'm not ready to put it on the market

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but if you have a buyer, call me!” The agent then offers the property for sale to a potential buyer. This is an illegal activity because offering a property for sale requires the written authorization of the seller or the seller’s agent!

3. The buyer’s agency contract must be signed in Kansas prior to the written offer to purchase, but earlier is better. Your firm may require that it be signed as soon as possible and prior to showing properties. Check your firm’s written policies to be sure that you are acting in accordance with your broker’s instructions.
4. The agency addendum to the contract restates the brokerage relationship of the listing and selling agents to the seller and the buyer. It also provides for special situations such as when the buyer (who is represented) buys a FSBO (an unrepresented seller) or when a buyer-customer (unrepresented buyer) buys a listed property (represented seller).
5. If the situation warrants, a transaction broker addendum or disclosed dual agency addendum (Missouri only!) must be signed prior to presenting the offer to the seller. The transaction broker addendum includes the following information:
  - a. “The following information may be disclosed by a transaction broker unless prohibited by the parties:
    - i. That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;
    - ii. that a seller or landlord is willing to accept less than the asking price or lease rate for the property;
    - iii. what the motivating factors are for any party buying, selling or leasing the property; or
    - iv. that a seller, buyer, landlord or tenant will agree to financing terms other than those offered. “<sup>6</sup>

**Track the Closing!**

Whether you use computer software such as the Microsoft Office Suite (Outlook) or a real estate software package such as Top Producer or Online Agent/Agent 2000 or simply use hand-written trackers, you must keep track of all the many steps in the closing process. For a “Transaction Tracker” form, email [corky@corkyhyatt.com](mailto:corky@corkyhyatt.com)!

**Process the Paperwork!**

Once the contract is fully executed (i.e. when both parties signed the contract), process the paperwork in your office. Complete your company’s Contract Information Sheet fully and turn that in to your office staff with the earnest money deposit check. Remember that you have only a limited time frame for the EMD check to be deposited. In Kansas, a fine may result when you don’t take the deadline seriously!

**Earnest Money Deposit Processing:**

How much time do you have? As mentioned earlier, Kansas license law allows five business days for deposit of the earnest money. By deposit the law means actually credited to your broker’s account, not just delivered to the bank. Remember that many banking institutions close the day’s deposits at 2:00 or 3:00 pm. Therefore a deposit made at 4:00 is credited on the following date or, if it’s a Friday, on the following

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<sup>6</sup> Kansas Statute 58-30,113,Chapter 58.--PERSONAL AND REAL PROPERTY, PART 6.--MISCELLANEOUS PROVISIONS Article 30.--REAL ESTATE BROKERS AND SALESPERSONS

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Monday. If this is outside the ten banking days, it's late! Kansas gives brokers five business days to deposit earnest monies. The same rule applies about the date deposited. If you hold EMD checks too long, they may not be deposited within the contract terms which require an amendment to the contract to bring it in line with the actual deposit. It can be very embarrassing to ask you seller or buyer client to amend the contract because you delayed the deposit!

Learn from each contract experience! Use a small tape recorder to tape your offer presentation. Review your tracking sheet/software checklist to see where you let the situation get out of hand.

When you've done a good job, ask for a letter of recommendation! If you don't ask, they'll generally not write testimonials for you!



Put e-HUD's to work for you as well as your sellers and buyers! On January 1<sup>st</sup> of each year, email your closed sellers and buyers a message of "Happy New Year" and that you've attached their Settlement Statement from their closing which they'll need to file their taxes for the year. They will appreciate your thinking of them, wishing them a healthy, happy, and prosperous new year, and attaching a document which they need!

What if they don't use email? Then mail it!

### **POSSESSION:**

Be sure that the possession goes as smoothly as your well-orchestrated closing did. The keys must be delivered to the purchaser in time to take possession as directed in the real estate sale contract. Frequently, one key will be delivered to the Buyer while the remaining keys, garage door openers, and special instructions are left for them in the property, such as on the kitchen cabinet. It is wise to ask the seller to make up a packet of warranties and other paperwork which will be given to the buyer, either at closing or left for him in the house. Be sure that both parties understand that the property must be left in the condition required by the sale contract, which includes not only that the possessions included are left by the seller but also that the trash and refuse is removed by the seller prior to closing. It is common courtesy for the seller to leave the property clean, but many real estate contracts now include that requirement because not every seller feels that this is his or her responsibility.

### **FOLLOW UP!**

At the end of the transaction, be sure to "close the loop." Enter your clients into your follow-up campaign to make sure that you can assist them with any issues that arise after the closing. Some licensees hide from closed sellers and buyers. They don't want to hear about the problems that can arise. However, do you want to be part of the problem or part of the solution?

A good follow-up campaign works as follows:

- Contact each closed buyer one day after closing,
- One week
- One month
- Three months
- Six months
- Nine months, and
- One year after closing.

Be there to help when they need you! It's not only good current business but it is also good future business!