

Corky Hyatt Seminars presents the Missouri Real Estate Practice Course by Home Study
Textbook: Listing Properties

Welcome to the listing portion of this course. We call it “Pro-Active” listing and marketing because successful real estate professionals practice pro-actively, in other words they actively not passively represent their seller clients! The **passive agent practices the “4-P” approach** to listing. The four “Ps” are **putting** the property into MLS, **putting** an ad in the paper, **putting** a sign in the yard, and **praying** that someone else will sell it! Never fear competition for listings! When you professionally present, price, service, negotiate, and close your sellers’ properties, you will build a productive and profitable client base which generates referrals and income for the future.



There are two approaches to listing appointments, i.e. **the one-step (or one visit presentation) and the two-step** (two visit presentation). There are advantages and disadvantages of each. However, generally new agents use the two step approach while experienced associates do the one-step listing presentation. **Here is a chart depicting the advantages and disadvantages of each approach.**

You may wish to use both approaches depending upon the property. Even an experienced agent will use the two-visit approach to list unusual or hard-to-comp properties.

Scripts provide power!

When you have a good script, you become a better listener as well as making better “points” with the listener on the phone.

Here’s one good listing telephone script from Barbara Swartz, a nationally recognized listing trainer.



- **“Let me tell you how I work!”**
- **“I’ll prepare a detailed report for you including an analysis of homes that have recently sold in your area as well as those currently on the market.”**
- **“I’ll present it to you as well as my marketing program for the sale of your property.”**

• Barb Schwarz, Speaker, Author, & Trainer, www.stagedhomes.com

Once you’ve arranged to meet with the prospective sellers, utilize a script to gain as much important information as possible. Once you’ve set the tone of the conversation with the potential seller with your initial script, get down to asking basic questions. The **answers to these questions will allow you to make a good CMA and prepare well for your listing presentation.** Here is a list of questions that you will need to ask all seller prospects prior to making your listing presentation:

- **Your name please? (Spelling is critical because nothing upsets prospects more than having their name spelled incorrectly in 24 point bold type!)**
- **Other owners? Who’s on title?**
- **Your address?**
- **Phone numbers?**
- **Please describe...**
- **Lot size and shape?**
- **What are you asking?**
- **When does it have to be sold?**
- **What do you owe?**
- **Are you interviewing other brokers? Whom?**

Pros & Cons	One-Step	Two-Step	Where?
ADVANTAGES	TIME CONTROL	THOROUGH PREPARATION	STEP ONE: HOME TO MEASURE, PHOTO, NOTE DEFECTS!
DIS-ADVANTAGE	MUST KNOW MARKET WELL	LACK OF EXPERIENCE IN MARKET	STEP TWO: OFFICE FOR CONTROL!

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By **setting both appointments at the same time**, you allow yourself enough time between your first and second visit to prepare a winning listing presentation! It is necessary to have all the property owners present for your presentation, no matter where you make it, in order to “get the job!” The owner not present tends to play the devil’s advocate and be negative toward your listing the property.

Do you wish to be first or last in a multiple-presentation competition? By being first, you have the opportunity to make a good presentation and get the job without their seeing any other presentations! By being last, you have the opportunity to sign them up if they do see all the presentations before making a decision. Make your position determination based on the personality of the sellers when possible! Some, be first! Some, be last! Just make a good presentation and get the job!

On your first visit to the property, **make a tour, ask questions, take photos, and look for indications of materials defects, i.e. “red flags”¹ that will indicate potential problems in the sale.** Ask lots of questions! Take notes! Sellers will be impressed with your attention to detail and with your interest in their situation. Taking notes indicates interest in what the prospective seller client is saying and assists in creating your “paper trail” of the transaction.

By taking the seller with you on your house tour, you will be able to **ask important questions** such as the following:

- Why did you choose this house when you bought it?
- What improvements have you made?
- What changes would you make if you stayed in this home?

Two key components make up your seller listing Presentation “**tool box**”: the listing presentation manual or notebook or your laptop/table computer, either of which provide your demonstration tool for your “Seller Action Plan.” In addition to this key component which you keep and don’t leave with the seller, there must be a personalized presentation piece that is theirs to keep.

Your listing presentation, whether in printed format or electronic, is your job interview. Everything you need to get the job, i. e., take their listing, must be included. People are 8 to 10 times more likely to value and believe what you visibly show them compared to what you simply state with no visual element. When you begin listing properties, your presentation may be a complete packaged presentation available from your firm; your franchise; a real estate vendor; or it may be your personal presentation which you build, or a combination of both. Either way, you will add to it the visuals, audio clips, and video clips which overcome each fear or objection that the seller may raise! Your listing presentation requires constant re-evaluation, updating, and enhancing to keep it current with the market and with your expanding knowledge and expertise!

Your listing presentation is your best resource for securing well-priced, well-staged listings from motivated sellers. Your presentation therefore must have at least one graphic, photo, drawing, audio or video clip that illustrates your response to each seller objection or “need to know”. Your presentation **educates the seller** as well as selling you, your company, and your marketing plan as the best ally that they have in the sale process.

If you use a presentation manual, be sure to purchase an elegant notebook or use one customized to your firm or franchise. Use non-glare sheet protectors or laminations so that the consumer can clearly see your visuals no matter what the lighting. Use dividers for quick movement from one section to another based on the sellers questions or concerns. Use color, sound, interaction to keep the seller’s interest.



Taking notes of what the prospective clients are saying demonstrates both interest in what they are saying as well as attention to detail!

¹ “Red Flags” are visible indications of material defects in the property. Examples of a “red flag” are a water stain on a ceiling, watermarks on basement walls, cracking of sheet rock or plaster, and shiny soil in planting areas around the house. For more information on “red flags” and the dangers of misrepresentation and fraud, go to the “Legal Issues” chapter of this course.

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Differentiate yourself from your competition while never denigrating them! Use professionally prepared, vividly-colored visuals, charts, and graphs that illustrate your and your firms' best points for achieving the consumer's goals. They are not interested in you or your company but in what you and your firm can do for them! Include the following:

- Audio and video testimonials from past clients of yours or, in your early career, from your firm!
- Articles from newspapers, magazines, and the internet that promote you and your firm through pointing out how you will serve seller clients
- Letters from past clients and customers, specifically dealing with points of interest to this seller
- Action photographs and photographs of you and your firm with key clients whom the prospective seller might personally know or know from their key role in your community!

Remember, the key to getting listings is to differentiate yourself from your competition! What pages can you include that demonstrate your special services?



Where Will I Make My Listing Presentation?

You may make your listing presentation in your office or their home. Which location best meets the needs of the seller? Which best meets your needs? Which is the best win-win location for both of you? The advantage of doing it in their home might be their convenience; however, they may actually prefer to come to your office because their home has so many distractions. Children, television, telephone, pets, and work that needs to be done can keep the sellers from concentrating on making an excellent decision about the sale of their property. Your office offers "home turf" benefits including all the tools necessary are close at hand and the impression your office will make on the prospects.

You'll have to make this decision on your own based on your market, your office,

and your sellers needs.

Don't leave out any of the decision-makers when you set your presentation appointment. Have them all present or it will cause you problems in securing well-priced, well-staged listings. Sellers are either "for you" or "against you!" When you can make your presentation to all of the sellers, you have a far greater opportunity to present your case and secure the listing.

The secrets to a successful presentation include not only all the appropriate preparation, information, and tools but also enthusiasm and professionalism! A very old real estate saying says **that "They don't care how much you know until they know how much you care!"** In the listing presentation, that saying makes excellent sense. By being enthusiastic, prepared, and professional you demonstrate the characteristics that the majority of sellers require. Use all the best tools available to you! Don't lose a listing because you're not using the tools provided for you by your firm, your board, or any other outside source.

The best way to control an interview or a telephone conversation or a presentation is to ask questions! Questions take control while statements and comments fail to focus their attention on you and what you want to share. The person asking controls while the person responding does not. Secure small agreements throughout your presentation rather than waiting until the end and attempting to get the "big yes!"

Here is list of key questions to ask the seller during your presentation. Each question secures valuable information that will assist you in preventing problems during the listing period as well as learning key information about the perceptions of the seller. Remember that perception is reality!

REMEMBER that the number one piece of information you need to ascertain is the sellers' motivation to sell! Here are the motivation questions:

1. When do you need to move?
2. Why do you have to sell your property? (When a seller says to you "We don't have to sell!" you need to ask yourself whether you want to spend you time with him!)
3. What repairs/improvements are you planning to make to sell your home? (The more they're prepared to do, the more motivated they are?)

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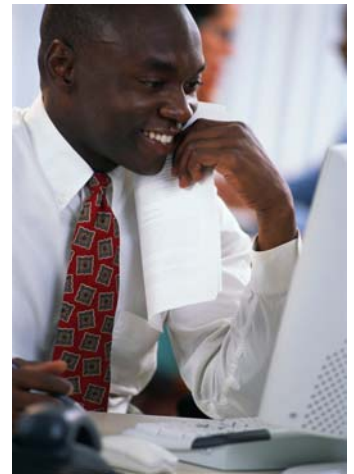
4. Are you prepared to price your property at market value to sell within your time frame?
5. What will you do if your property doesn't sell in your time frame?

Types of Listing Agreements

The **Exclusive Right to Sell Agreement** provides the broker and affiliated licensees with the greatest protection when marketing a seller's property. Why? When the seller signs an exclusive right to sell agreement, he/she agrees to pay the broker's commission under the terms of the agreement but including whether or not the seller sells the property through the broker!

The difference between the exclusive right to sell agreement and the **Exclusive Agency Agreement** is that in the E.A.A., the seller may sell the property to an individual without paying the broker's commission. However, if any other broker brings an acceptable offer to purchase to the seller, the seller owes the listing broker the commission.

An **Open Listing Agreement** generally provides the broker only the permission to offer the property for sale, the permission to place a sign in the yard, and agreement to pay the broker a commission if and only if the broker brings a buyer acceptable to the seller. Other brokers may also have open listing agreements with the same seller. Individuals may come directly to the seller and purchase without the seller owing any broker a commission!



What is a "Net Listing" and is it legal?²

A net listing is a listing based on the net price the seller will receive if the property is sold. Under a net listing the broker can offer the property for sale at the highest price obtainable to increase the commission. This type of listing is illegal in most if not all states. For example, if the seller says "I must have \$150,000 so price it at what you want to get me that net" and the licensee offers it for sale at \$200,000 to get the \$50,000 difference, that constitutes a "net listing" and is illegal. However, if the seller says "I want \$150,000 so add your X% commission to that" you may legally add X% to his \$150,000 and have him sign a listing for that amount with an X% commission rate. This last situation does not make it a "net listing."³

May I sign a listing contract for my broker?



If your broker empowers you to sign the listing agreement with the seller for the broker, you may do so. Specifically, many listing agreements have a signature line for the company with a "by" or "Agent" signature line for the licensee to sign for the broker. If you are in doubt about whether or not you may sign for your broker, ask your broker! The responsibilities owed by the broker and his/her affiliated licensees to the seller are listed in the exclusive right to sell agreement. License law specifies that these duties and obligations will be listed in both seller listing and buyer listing agreements.

May a listing contract be cancelled (terminated) by the client? Most firm's listing contracts are bilateral or two-sided contracts, requiring the agreement in writing of both parties, i.e. the broker (or his licensees signing for him with his permission) and the seller or buyer

² 20 CSR 2250-8.090 Brokerage Service4 Agreements, Section (4) (F) states that "No licensee shall make or enter into a net listing agreement for the sale or lease of real property or any interest in real property; this agreement is defined as one that stipulates a net price to be received by the owner with the excess over that price to be received by the broker as commission."

³ K.S.A. 58-3062. Prohibited acts, j: An agency agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net **proceeds** to the owner.

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client. The listing contract specifies how the contract may be cancelled. Some are unilaterally cancelable, i.e. by either party, often requiring written notice and sometimes incurring a cancellation fee if that is part of the original listing agreement. Some listing contracts require the agreement of both parties to cancel the agreement, requiring the signatures of both parties to a cancellation agreement which again may incur a cancellation fee from the seller or buyer client.⁴⁵

When is “pay day”?

Real estate licensees are generally independent contractors rather than employees. As independent contractors, licensees operate under an “Independent Contractor Agreement” with their broker/owner or through their broker/manager. The real estate firm sets the commission rates under which the licensee can work. The company sets minimum rates and it is not the decision of the licensee but rather the decision of the broker/owner which dictates what commission rates a licensee can charge a seller or buyer client or customer.⁶⁷

⁴ The Kansas Statute, K.S.A. 58-30,104. Termination of relationships (Brokerage Relationships in Real Estate Transactions Act):

1. The agency relationships set forth in K.S.A. 2001 Supp. 58-30,103, and amendments thereto, shall commence at the time that the client engages the broker, and shall continue until: A transaction is closed according to the agreement of the parties; or if a transaction is not closed according to the agreement of the parties, the earlier of: Any date of expiration agreed upon by the parties in the agency agreement or in any amendments thereto; or Any authorized termination of the relationship.
2. Except as otherwise agreed in writing, a broker owes no further duties to the client after termination, expiration, or the closing of a transaction according to the agreement of the parties, except: To account for all moneys and property relating to the engagement; and to keep confidential all confidential information received during the course of the engagement unless: The client permits the disclosure by subsequent word or conduct; such disclosure is required by law; or the information becomes public from a source other than the broker.

⁵ The **Missouri statute** regarding Termination of Relationships is “339.790. Commencement of agreement, when – duties after termination of agreement” states that “1. The relationships set forth in this section commence on the effective date of the real estate broker’s agreement and continue until performance, completion, termination or expiration of that agreement. 2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of: (1) Accounting in a timely manner for all money and property related to, and received during the relationships; and (2) Treating as confidential information provided by the client during the course of the relationship that may reasonably be expected to have a negative impact on the client’s real estate activity unless: (1) The client to whom the information pertains grants written consent; (b) Disclosure of the information is required by law; (c) The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the real estate brokerage or the affiliated licensee; or (d) Disclosure is necessary to defend the designated broker or an affiliated licensee against an action or wrongful conduct in an administrative or judicial proceeding or before a professional committee.”

⁶ K.S.A.58-30,105. Compensation (Brokerage Relationships in Real Estate Transactions Act):

- a. Compensation is presumed to come from the transaction and shall be determined by agency or transaction broker agreements entered into pursuant to K.S.A. 2001 Supp. 58-30,103, and amendments thereto. Payment of compensation by itself shall not establish an agency between the party who paid the compensation and the broker or any affiliated licensee. In any transaction, the broker's compensation may be paid by the seller, the landlord, the buyer or the tenant. A broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell or lease.
- b. A broker may: Pay a commission or compensation to any licensee affiliated with the broker for performing services under this act; with the written agreement of the seller, landlord, buyer or tenant share a commission with another broker who acted as a transaction broker, a subagent or an agent of the other party; and pay a referral fee to a person who is licensed as a broker under the real estate brokers' and salespersons' license act or under the law of another jurisdiction, provided that written disclosure is made to the client of any financial interest that the broker has in the brokerage firm receiving the referral fee.

⁷ There are a number of **Missouri statute** sections dealing with the issue of Compensation. For example, in the section dealing with Compensation of a Designated Broker, the following information is provided defining compensation: “339.800. Compensation of designated broker, paid by whom, sharing compensation—payment establishing agency—agreement by seller or buyer on sharing compensation.” While we will not include the entire section here, please note the following subsections: 1. In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers. 2. Payment of compensation by itself shall not establish an agency relationship or transaction brokerage relationship between the party who paid the compensation and the designated broker or any affiliated licensee. 5. A designated broker may be compensated by more than one party for services in a transaction with the knowledge of all the parties at or before the time of entering into a written contract to buy, sell, or lease. 6. Nothing contained in this section shall relieve the licensee from the requirement of obtaining a written agreement for brokerage services or other written agreement addressing compensation.”

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As independent contractors, licensees are generally paid after the transaction has closed and the real estate firm has received its share of the total commission. For example, in a coop sale (i.e. two companies are involved, a listing company and a selling company) with a total commission of six percent (just as an example because all commission rates are set by individual firms), the listing licensee's firm will receive 3% and the selling licensee's firm will receive 3%. If the sale price is \$200,000, then each company would receive \$6,000.00. If the licensee is working on a 50/50 split, the licensee will receive \$3,000 after the firm has received its share of the commission from the closed sale. Some firms bill licensees monthly for certain expenses or have a per transaction fee, so these fees come out of the licensee's gross commission. For example, if the listing licensee's firm has a \$275 transaction fee and the licensee owes no outstanding balance, the commission would be as follows:

1. Total commission for \$200,000 sale at 6% would be \$12,000.
2. Each firm would receive \$6,000.
3. The listing licensee will receive \$3,000 minus the \$275 transaction fee for a commission of \$2,725.00.

WORKING WITH SELLERS (or Buyers) AS A TRANSACTION BROKER⁸ of DISCLOSED DUAL AGENT:

Transaction Broker:

The term Transaction Broker means a licensee who works with a consumer and is not an agent of that consumer. Therefore the consumer is not a client of the licensee but is rather a customer. The key differences between a transaction broker and an agent of a seller are as follows:

1. A transaction broker **assists** a seller while a listing agent **represents** a seller.
2. A transaction broker **can not give advice** while a listing agent can give advice.
3. A transaction broker must keep all confidences (the confidences of all parties) in a transaction while a listing agent must keep the seller client's confidences but must disclose anything he learns about the buyer-customer to his client the seller.
4. A transaction broker can not suggest negotiating strategies or other techniques that might put one party to the transaction at a disadvantage as compared to the other party.
5. A transaction broker can sign an exclusive agreement with a seller-customer to sell his property and earn a commission as a transaction broker. This is not a "listing" contract but a "transaction broker" contract with the seller.
6. **A listing agent (of either the seller or the buyer) may become a transaction broker** when she sells her seller-listing to her buyer client, as long as both the seller client and the buyer client have given their permission for her to do so in the listing agreement (at the beginning of their agency relationship before any activities requiring a license have been performed by the licensee for the seller) and also in the agency disclosure addendum (signed prior to the presentation of an offer to the seller-client or the writing of an offer for a buyer client.)

Disclosed Dual Agent:

⁸ When a licensee becomes a transaction broker, Kansas license law (BRRETA) requires the use of a Transaction Broker Addendum. (Transaction Broker Addendum forms are mandatory forms adopted by the Kansas Real Estate Commission pursuant to K.S.A. 58-30,109.) A Transaction Broker Addendum amends a brokerage firm's agency agreement with a seller and the firm's agency agreement with a buyer for a contemplated transaction between the seller and buyer. There are four different Transaction Broker Addendum forms which are unique to the type of transaction: **Transaction Broker Addendum (TBA-RES)**: for transactions regarding the sale of residential property of four units or less for a firm which practices single agency not designated agency; **Transaction Broker Addendum (TBA-DA)**: for transactions regarding the sale of residential property of four units or less when the same individual is the designated agent for both the seller client and the buyer client; **Transaction Broker Addendum (TBA-COMM)**: for transactions regarding the sale or lease of commercial property or the sale of residential property of more than four units; **Transaction Broker Addendum (TBA-AG)**: for transactions regarding the sale of agricultural land. All of these forms can be found on the Kansas Real Estate Commission website, currently <http://www.accesskansas.org/krec/>. If that address changes, do a Google search to find it!

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The term D.D.A. means a licensee who represents both a seller and a buyer client with limited responsibilities. Here's how Missouri statute describes what a disclosed dual agent is, can do, and can not do:

“Dual agent, consent--dual agent as limited agent--disclosure of nonconfidential information, when--nondisclosure of information, when--confidential information--no imputation of information.”

“339.750. 1. A licensee may act as a dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.

2. A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 339.730 and 339.740 unless otherwise provided for in this section.

3. Except as provided in subsections 4 and 5 of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information as defined in section 339.710.

4. The following information shall not be disclosed by a dual agent without the consent of the client to whom the information pertains:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(2) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) What the motivating factors are for any client buying, selling, or leasing the property;

(4) That a client will agree to financing terms other than those offered; and

(5) The terms of any prior offers or counter offers made by any party.

5. A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure. A dual agent does not terminate the dual agency relationship by making any required or permitted disclosure.

6. In a dual agency relationship there shall be no imputation of knowledge or information between the client and the dual agent or among persons within an entity engaged as a dual agent.”⁹

⁹Missouri Revised Statutes, Chapter 339, Real Estate Agents, Brokers, Appraisers and Escrow Agents. Section 339.750 (L. 1996 S.B. 664 § 5) Effective 9-1-97