

Kansas Association of REALTORS® Presents

Required Broker Core: Salesperson Supervision, & Common Violations

REALTOR® Continuing Education

By Vernon L. Jarboe © Copyright 2018



KANSAS ASSOCIATION

OF

REALTORS®

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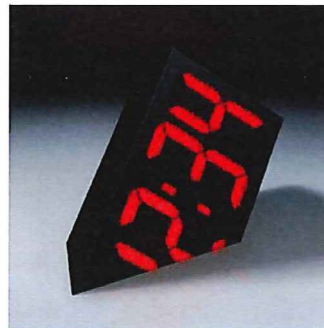
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Home Study

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Salesperson Supervision and Common Violations

This course has been approved by the Kansas Real Estate Commission for 4 hours of continuing education credit. This course also meets the mandatory Broker Core requirements for Brokers that began on January 1, 2000. It also has been approved for 4 hours of elective continuing education credit for Salespersons.

*KAR wishes to thank our
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Security 1st Title

www.Security1stKS.com

This course counts as required class for Brokers and elective credit for Salespersons under Kansas law and elective credit in Missouri for both Brokers and Salespersons.

The Author – Vernon L. Jarboe has over 30 years' experience in real estate matters handling development issues, land use, zoning and financing of small and major projects. Vernon also represents many local boards of REALTORS® through form review, advising on legal issues, including antitrust and ethics issues. Litigation experience includes representing landowners and condemning authorities in eminent domain matters, real estate brokers and salespersons in liability matters and collecting commissions. Vernon has continually manned the Real Estate Legal Hotline since its inception in 1998. The Legal Hotline is a subscription service through Real Estate Business Resources, Inc. (REBR) a subsidiary of the Kansas Association of Realtors offering free legal opinion to participating brokers and their firm.

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This course is sponsored by the Kansas Association of REALTORS® and they provide the continuing education credit.

This course is composed of four (4) components:

1. A narrative discussion of agency under current Kansas law in the real estate business. You need to read the narrative before proceeding.
2. Class discussion over an expanded version of the materials covered by the narrative, including questions over the quiz responses.
3. Resolution of fact patterns in small group and class discussion.
4. You will receive an email that will contain the link to the online exam for each class after all the classes have completed. This exam will need to be completed within 48 hours of the class. Upon successful completion of the online exam, you can download your certificate and KAR will be notified of your completion. KAR will ftp the results to KREC within seven days.

NARRATIVE

THE KANSAS REAL ESTATE COMMISSION (KREC)

KREC is an arm of state government. It is composed of five members appointed by the Governor and includes at least three Brokers, each with at least five years experience, and at least one person without a license who is not involved in the real estate business. One member comes from each congressional district to provide regional balance. The KREC hires its executive director who in turn is responsible for day to day management of the KREC staff.

The KREC is charged with establishing processes for issuing and renewing licenses which includes regulating and supervising continuing education courses and instructors. KREC also is responsible for enforcement of the Kansas Real Estate Brokers and Salespersons License Act, the Brokerage Relationships in Real Estate Transactions Act, Real Estate Recovery Fund Act and making and enforcing regulations that interpret and apply these enactments. A licensee is subject to the KREC enforcing any of these three sources of rules.

In this course we will explore the answers to these questions:

- ❖ How do violations come to the attention of KREC?
- ❖ How does KREC investigate violations?
- ❖ If KREC believes you have violated the law how do you find out about it?
- ❖ If KREC finds you in violation and you do not what is your remedy?
- ❖ What are the penalties if you are found to have violated the law?
- ❖ What are some common violations of the license law?
 - Failure to have fixed date of expiration in agency agreement
 - Failure to include accurate agency disclosure in contract
 - Real estate services without a license
 - Crossing another broker's exclusive agreement
 - Misrepresentation
 - Trust account violations
 - Advertising violations
 - Interference with contract claims
 - Record keeping violations
 - Signing documents without power of attorney

How do violations come to the attention of KREC?

There are three general ways in which KREC becomes aware of violations.

- ✓ A citizen may go to KREC and file a complaint.
- ✓ A licensee may go the KREC and file a complaint.
- ✓ The auditor may come to your offices and find a violation by review of your files.

Some of the common violations come to the attention of KREC in each of these ways.

How does KREC investigate violations?

If the violation comes up by audit then the auditor will likely have found the violation from review of your own files. However, in some cases you may be asked to supplement or explain information that was found by audit. In the cases of a complaint, initiated by citizen or other licensee, you will likely receive a letter from the staff of KREC asking for documents and explanations. They will likely interview other people in the transaction – consumers or other licensees. They may call you to discuss things that require more explanation, but most of their information gathering typically happens in writing -- assuring less likelihood of misunderstanding.

It is important that you not ignore an inquiry and that you fully explain your position.

Never assume the complaint is so without merit that anyone looking at the facts will simply disregard the complainant and find in your favor. Therefore, you should promptly gather your information, make an outline of what KREC asked for and write your response with complete detail. After making a draft it is wise to have someone else read it to make sure you have been complete. Do not sink your own ship with inconsistencies and inaccuracies – if you say a document provides some answer, it better be there.

If KREC believes you have violated the law, how do you find out about it?

In the event the violation was detected by audit then you will sometimes learn of initial findings in an exit interview with the auditor. Later, if the KREC believes the auditor correct in his or her findings, then you will receive written communication of the violation and penalty proposed. In the event a violation is believed to have occurred and it was found based on complaint and investigation then you will receive written communication about the findings.

The written communication comes in the form of a Summary Proceedings Order in which the facts, violation and penalties are all laid out. In conclusion, you are informed that if you do nothing the Order becomes final. Your choice is

to comply with the findings – pay the fine, agree to the suspension or whatever – or ask for a hearing in the time allowed by the Order. Failure to request a hearing in the time allowed makes the Order **final** and **unappealable**.

What are the penalties if you are found to have violated the law?

KREC can suspend, revoke, non-renew, or restrict a license based on violations of the law. Typical fines are in the low hundreds of dollars for the most common violations. KREC has the ability to fine a licensee for up to \$1000 for the first offense. If they believe the conduct exhibits aggravating circumstances for some types of violations, like forgery, fraud or lying to financial institutions, you can expect KREC to be properly concerned and levy more severe penalties.

If KREC finds you in violation AND YOU DO NOT, what is your remedy?

Ask for a hearing when you disagree with their findings, either because you do not think the transgression exists or because you think the penalty too stiff.

Once you ask for a hearing the matter proceeds much like any legal matter:

- Documents are exchanged
- Testimony can be taken by deposition,
- Prehearing motions are filed, argued and heard and
- Eventually you find yourself in a room that looks like any other courtroom.

The hearing is just like a trial with KREC attorneys presenting their case, then you present yours – both including witnesses, documents and exhibits.

Eventually there is a ruling. Either side can appeal the result to District Court and on to the Court of Appeals for Kansas, but winning on an appeal is very challenging due to the deference courts give findings by administrative agencies over their special subject matter.

Some common violations:

- ~ Failure to have fixed date of expiration in agency agreement – something the law has long required and any standard form has a blank for this information. The law does not allow permanent or unending listings and buyer agency agreements -- but there is no real limit on how long they can be when buyer or seller agrees.
 - o This violation is most often detected by audit and will likely lead to a modest fine unless there are aggravating circumstances. One version of this violation is a listing prepared by someone else that simply has no expiration blank nor date. It might occur where the consumer has

an attorney drafting the listing or some out of state company doing the work.

- Another version is where the auditor finds your standard form agreement and on the blank where the expiration should be they find - it still blank.
- Other things that do not work include putting until closed or to be determined on the blank which of course do not constitute a fixed date of expiration.
- Changes to a date originally completed by agreement with the consumer but not signed off on in writing by the consumer will also not work.

~ Failure to include accurate agency disclosure in contract refers to the obligation to make sure the licensees in a transaction have informed buyer and seller of their agency relationships. It is believed consumers will be happier with their real estate experience if they understand up front which licensee is on whose team. Therefore, the law requires that both listing and selling side licensees disclose to buyer and seller in the sale contract who they represent.

- This violation is most often detected by audit and will likely lead to a modest fine unless there are aggravating circumstances.
- One version of this error is what I call the “Someone does it to you” version. Factually, the selling agent fills in the agency designation of the listing side and does it incorrectly in the offer. Obviously, the listing side could and should correct the mistake but either does not see it or does not correct it and the deal closes with the mistake still on the contract. Assuming the selling licensee got their own agency correct then the only fine will be on the listing side even though the selling licensee made the mistake.
- You will also be fined for the differences between designated and straight agency. If you were a designated seller agent but the box for seller agency was marked - it is wrong.
- Failure to disclose agency at all is another version of this error. It could exist by failure to complete the agency designation section of the contract for your side of the transaction or where the contract is prepared by someone else: attorney for a party; the party’s in house legal department or an out of state broker, any of whom do not recognize your duty. The correct answer is to get them to add the correct disclosure but sometimes you cannot get that done because the person in charge of the form will not cooperate. Do the best you can

and send a “please will you include . . .” fax or email with the requested disclosure.

- ~ Real estate services without a license is a violation imposed on someone who has some form of a license. This violation does not apply to someone who has never had a license because KREC has no jurisdiction over someone who does not and never did have a license. Usually it implies the Broker has allowed someone without a license to act as though they do. This could be an office staff person, a retired salesperson, or someone whose license is currently suspended.
 - This violation may be detected by audit and will then likely lead to a modest fine, unless there are aggravating circumstances. This violation may come from a complaint, in which case the penalty would be more severe.
 - Expired, revoked or retired persons who do not have an active real estate license – do not have a real estate license. Any such person caught in these circumstances will have this factor considered should they become eligible for a license. A broker who permits this activity will be charged with loaning his or her broker’s license.
 - This violation could also arise by paying referral fees to an unlicensed person.

For help with what an unlicensed person may or may not do under a broker, see: <http://www.krec.ks.gov>. It tells us:

Unlicensed personnel may not:

- Answer questions concerning properties listed with the firm, except to confirm that the property is listed and to identify the listing broker or salesperson.
- Show property and discuss anything related to the property or related to its purchase.
- Discuss or explain a contract, listing, lease agreement or other real estate document with anyone outside the firm.
- Negotiate or agree to any commission, commission split, or referral fee on behalf of a licensee.

Crossing another broker’s exclusive agreement

This refers to the conduct all licensees know as wrong – crossing another broker’s sign. In application it gets more complicated. If a salesperson leaves one broker for another the listings acquired by the salesperson in the name of the old broker belong to that broker and those sellers may not be contacted by the salesperson either before leaving or after leaving the old broker with a transfer to the new broker in mind. If the contact is – “I am getting ready to leave for a new brokerage – I am sure you want to follow me there” – the salesperson is interfering with a contract belonging to the old broker. If the contact is – “I have moved to a new company and am sure you want to follow me here” – it is crossing the old broker’s listing.

- This violation usually comes by complaint but will likely not cause a significant penalty unless there are aggravating facts.

Friends that betray you

These are the people you want to ask why they listed with a competitor when you find that sign in their front yard.

Unhappy clients of another agent

These are the sellers who call wanting to move their listing after complaining about their current listing agent.

In either case any conversation even if started by the consumer that is beyond – I would be happy to discuss this with you when you are no longer listed with the other broker - will likely get you in trouble.

Any violation of these rules will also cause ethical issues to arise because violation of the law will also violate ethics rules.

- ~ ***Misrepresentation*** means lying about the property or transaction. A lie can be either intentional in which case we call it *fraud* or it can be passive by simply not disclosing that which you know the consumer would want to know, in which case we call it *passive fraud*.
 - Both are not only the source of risk for losing litigation but also violations of the license law and ethics rules. BRRETA requires A) disclosure of what you know and B) a suggestion by licensees to consumers that they acquire the assistance of qualified third parties to evaluate the property.
- This violation usually comes by complaint and will likely cause a significant penalty especially if there are aggravating facts. Misrepresentation is one of the factors that can bring about the KREC

maximum penalty of \$5000 per offense and of course will likely cause them to seek revocation of the license.

- ~ Trust account violations typically come in the form of (A) mixing client money with your own whether intentionally or accidentally or (B) it is a more benign failure to deposit money when or where it belongs.
 - This violation is most often detected by audit and will likely lead to a modest fine, unless there are aggravating circumstances. If it comes by complaint it is likely to lead to a serious penalty.
 - The law requires earnest money deposits within five (5) business days of the effective date of the contract. Usually that means the date of the last signature to the last change, but it can be defined as some other date by agreement of the parties. Failure to deposit on time is, then, a failure to deposit within the 5 days of that date.
 - It is the parties, buyer and seller, who should decide where the money should be held. Often times the buyer and seller do not care or know where the money should be held, and it probably should not matter to anyone so long as the entity holding the money is reliable. The point is that is not a decision for the listing or selling licensee who should decide – it is the parties.
 - The Real Estate Settlement and Procedures Act (RESPA) would imply that the buyer should choose since it is their money until either closing or default but, in fact, it is negotiable.
 - A broker who mixes his or her own money with that of the client is guilty of commingling. That may arise by way of intentionally taking your clients money from trust or simply leaving too much of the broker's own money in the trust account through an accumulation of interest, an earned commission left behind after closing or letting the bank take the charges for your trust account operation or check printing out of client funds. With written consent of buyer and seller the broker may retain interest on monies in the broker's trust account.

~ Advertising violations include both false advertising and a failure to include the brokerage firm name in ads or on signs appropriately. The law requires:

. . . all advertising conducted by a licensee shall:

Be conducted under the direct supervision of the supervising broker or branch broker;

include the name of the supervising broker's trade name or business name by prominently and conspicuously displaying

or announcing the supervising broker's trade name or business name in a readable and identifiable manner; and

include any other information that the supervising broker or branch broker considers necessary.

- The idea that the broker or brokerage firm name be “prominently and conspicuously” displayed is relatively new. There is thought that means in print and form more noticeable than the licensee name or Team name. Clearly this means a consumer knows who the responsible broker is simply by looking at the ad (ad includes business cards, sign, internet web pages and pretty much every promotional piece you can imagine.)
 - This violation sometimes comes by complaint but will likely not cause a significant penalty unless there are aggravating facts.
 - False advertising would likely cause a more severe reaction from KREC and in some cases has resulted in revocation.
- ~ Licensee owned property creates a special case. In this instance, if the property is listed with the broker, then the traditional rules apply - see above. If the property is not listed then all advertising must inform a consumer seeing the advertising that they are contacting someone with a license by noting – either “owner licensee” or “owner agent” or the equivalent – but must “be done in a manner that clearly informs the public that a real estate licensee is the owner of or has an interest in the property advertised.”
- ~ Interference with contract violations refer to situations where a licensee knows a consumer has a contract of some form with someone else – could be a purchase agreement or an agency agreement – and tries to keep them from performing their obligations under that contract.
- This violation usually comes by complaint but will likely not cause a significant penalty unless there are aggravating facts like some financial loss to someone.
 - Examples of this violation include:

- Crossing another broker listing – which is a separate violation discussed above. In this situation the licensee tries to obtain a listing or buyer agency agreement from a consumer who already has one with someone else. This could be the best friend you find listed with another broker. KREC has posted some scenarios to help explain their view of how to handle contact with the client of another licensee:
http://www.krec.ks.gov/forms/AgencyScenarios_4-16-07.doc
 - In some cases licensees have been working with a buyer for a period of time without success and then find the buyer bought something through another licensee. Trying to talk the buyer or seller out of the deal they have already made on the basis you could do better for them will result in this problem.
 - Finding a buyer interested in one of your listings and then trying to talk that buyer out of the buyer agency agreement they have with another broker so you can get both sides of the deal provides a direct example of this issue.
- ~ Record keeping violations are typically imposed on the Broker because it is the broker who is supposed to keep the records. Usually, of course, the salesperson has the records initially and often has their own file on the transaction. The KREC regulations require:
 - Each broker shall retain in the broker's files for a period of at least three years true copies of all records relating to the broker's real estate business, including:
 - Each transaction file, whether pending, closed or cancelled, should contain the following record (if applicable):
 - contracts;
 - correspondence;
 - agency agreement with seller;
 - agency agreement with buyer;
 - transactions broker addendum;
 - transaction broker agreement;
 - offers, counteroffers;
 - 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, and;
 - records required by K.A.R. 86-3-18” (the latter refers to trust account)
 - This violation is most often detected by audit and will then likely lead to a modest fine unless there are aggravating circumstances. Some situations have come up by complaint and have been dealt with more seriously.
- ~ Signing documents without power of attorney is a very serious violation. The law has long required two things when it comes to this issue. It is illegal to sign documents for a client without a power of attorney and a power of attorney cannot be included as part of an agency agreement. Generally, it is unwise to sign documents for a consumer even with a power of attorney for two reasons 1) in this day and age it is a rare occasion when someone is so inaccessible they cannot sign for themselves and 2) we can always see what we should not have signed after it is too late to fix it – hindsight being 20/20.
- This violation is sometimes detected by audit and will then likely lead to a modest fine unless there are aggravating circumstances. This violation can come by complaint and then would likely cause a significant penalty.

To review the ARELLO Supervising Broker Best Practices Guide visit this website:
<http://www.krec.ks.gov/docs/default-source/informational-documents/arello-supervising-broker-best-practices>.

INSTRUCTIONS: FOR EACH OF THESE QUESTIONS INFORMATION TO ANSWER THEM MAY BE FOUND IN THE RESOURCES ATTACHED – LICENSE LAW, REGULATIONS AND FROM YOUR OWN KNOWLEDGE. Write out a sentence or two that answers the question and explains why you think it is true.

1 - Can the parties cancel a contract (or should they) without resolving the earnest money?

You have a situation where a contract has fallen apart. The parties, even though each thinks the other is responsible for the problem, are willing to cancel, but want to reserve a dispute over the earnest money. The title company has produced a form which appears to cancel the contract and reserve the earnest money for later debate. What does that mean to the buyer and what does that mean to the seller?

2 - Contract to sell real estate – does it need to be in writing?

If a buyer and seller agree to buy and sell – buyer shows up with cash and seller signs a deed - was there a real estate contract. What if one of them did not perform – can the other enforce the agreement? What does it mean to be able to “enforce an agreement”?

3 - Definition of a Branch Office – when does one exist – or need to exist?

Agents sometimes work out of their home at a seller's home, a buyer's home, open houses, subdivision offices or Starbucks. Are any of those a "branch office"? If, for example, you rented office space in a nearby small town, put a sign in the window indicating "brokerage firm name – conference room" could that create a branch office? If yes, then what do you need to do?

4 - A contract for sale arises on a residential property you are managing for the owner.

A contract to sell a property was written with the person you hired for the owner to do the remodeling on a rental that you (a real estate broker) were managing. You have no listing agreement on the property. Should you back up and get a listing agreement or go forward. If the contract has not closed what is the best agency choice – seller agency, seller designated agency, buyer agency, buyer designated agency or transaction broker? What if it has already closed? What agency relationship should be disclosed in the contract? Could you have a listing paragraph in the management contract you sign with owners?

5 - Listing agreements are not all the same. How do you compete?

Most listing agreements have a clause often described as the “broker protection clause” which protects a broker’s right to a commission even after the listing has expired if the property is sold to buyers who looked at the property during the term of the listing. Broker protection clauses usually have a term for how many days after expiration of the listing which is individually negotiated by different brokers. Some broker protection clauses include language which indicates that the clause goes away and becomes ineffective if the seller lists the property with a different broker during the protection period. Some do not have that language. In your market, there is one broker using a listing agreement which does not remove the listing broker protection clause in the event a listing is made with a second broker. This is causing some sellers to be concerned. Should they be concerned – if yes about what should they be concerned? How could you market around this issue?

6 – Disclosure of relationship with the seller on your listing – when do you need to do that.

You have a listing on property that is owned by your son in law. Do you need to disclose this relationship? If yes, how and when do you do so?

7 – Disclosure duty – changes to circumstances after contract and before closing.

Your listing is under contract when Seller calls to report their son has committed suicide in the home – closing is 3 days out. What do you do with this information? Would your answer be different if the seller called to say a roof leak appeared in last weekend's rains after all inspection times allowed in the contract have run?

8 – Discovery of a new problem – something not disclosed and now found in inspection period.

Buyer finds during inspection period that a listed sex predator lives next door and does not want to close. Buyer travels a lot leaving his wife and young children at home alone. Assume seller did not know this – does that matter? Assume Realtor ® did know this – does that matter?

Required Broker Core: Salesperson Supervision

KREC Rules and Regulations: Sections of License Law, Regulations and Guidance Documents

Agency Choices KSA 58-30,106; 58-30,107; and 58-30,113

58-30,106. Minimum requirements of seller's or landlord's agent. (a) A seller's agent or a landlord's agent shall be a statutory agent with the duty and obligation to: (1) Perform the terms of the written agreement made with the client; (2) promote the interests of the client with the utmost good faith, loyalty and fidelity, including: (A) presenting in a timely manner all offers to and from the client, when such offer is received prior to the closing of the sale unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller; (B) disclosing to the client all adverse material facts actually known by the licensee about the buyer or tenant; and (C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee; (3) account in a timely manner for all money and property received; (4) comply with all requirements of this act and rules and regulations adopted hereunder; and (5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes and rules and regulations. (b) If pursuant to subsection (a)(2)(C), the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters. (c) A seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure. (d)(1) A seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to: (A) Any environmental hazards affecting the property which are required by law to be disclosed; (B) the physical condition of the property; (C) any material defects in the property; (D) any material defects in the title to the property; or (E) any material limitation on the client's ability to perform under the terms of the contract. (2) A seller's or landlord's agent owes no duty to conduct an independent

inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any qualified third party. (3) Except as provided in subsection (d)(4), a seller's or landlord's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer. (4) A seller's or landlord's agent shall disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described in subsection (d)(3). (5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson. (e) A seller's or landlord's agent may provide assistance to the customer by performing ministerial acts. Performing ministerial acts for the customer shall not be construed as violating the brokerage firm's agency with the seller or landlord and shall not be construed as forming an agency with the customer. (f) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client. (g) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer sub-agency and pay compensation to other brokers. (h) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a buyer's or tenant's agent or to cooperate with and pay compensation to a buyer's or tenant's agent. (i) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a transaction broker or to cooperate with and pay compensation to a transaction broker. (j) If the seller or landlord has authorized the broker to offer cooperation with other licensees pursuant to subsection (g), (h) or (i) the broker shall not refuse permission to another licensee to show a listed property or refuse to receive and transmit to the seller or landlord a written offer on a listed property from another licensee unless specifically instructed by the seller in writing. The broker shall provide a copy of the written instructions to another licensee upon request. (k) A seller's or landlord's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice. (L. 1995, ch. 252, § 6; Revived, L. 1997, ch. 65, § 32; L. 1997, ch. 65, § 33; L. 2015, ch. 21, § 5.)

58-30,107. Minimum requirements of buyer's agent or tenant's agent. (a) A buyer's or a tenant's agent shall be a statutory agent with the duty and obligation to: (1) Perform the terms of the written agreement made with the client; (2) promote the interests of the client with the utmost good faith, loyalty and fidelity, including: (A) Presenting in a timely manner all offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract; (B) disclosing to the client all adverse material facts actually known by the licensee; and (C) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee; (3) account in a timely manner for all money and property received; (4) comply with all requirements of this act and rules and regulations adopted hereunder; and (5) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights statutes or rules and regulations. (b) If pursuant to subsection (a)(2)(C), the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters. (c) A buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute or rule and regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure. (d)(1) A buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction. (2) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any qualified third party. (3) Except as provided in subsection (d)(4), a buyer's or tenant's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer. (4) A buyer's or tenant's agent shall disclose to the client or customer any facts actually known by the licensee that were omitted from or contradict any information included in a written report described in subsection (d)(3). (5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of

care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson. (e) A buyer's or tenant's agent may provide assistance to the seller or landlord by performing ministerial acts. Performing ministerial acts for the seller or landlord shall not be construed as violating the brokerage firm's agency with the buyer or tenant and shall not be construed as forming an agency with the seller or landlord. (f) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This subsection is intended to allow a buyer's or tenant's agent to show competing buyers or tenants the same property and to assist competing buyers or tenants in attempting to purchase or lease a particular property. (g) A buyer or tenant may agree in writing with a buyer's or tenant's agent that the agent may receive compensation from a seller's or landlord's agent or from a transaction broker. (h) A buyer's or tenant's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence that the licensee acted toward the plaintiff with willful conduct, wanton conduct, fraud or malice. (L. 1995, ch. 252, § 7; Revised, L. 1997, ch. 65, § 34; L. 1997, ch. 65, § 35; Oct. 1.)

58-30,113. Transaction broker; obligations of; disclosure of information. (a) A broker engaged as a transaction broker shall not act as an agent for either party. (b) A transaction broker shall have the following obligations and responsibilities: (1) To perform the terms of any written or oral agreement made with any party to the transaction; (2) to exercise reasonable skill and care as a transaction broker, including, but not limited to: (A) Presenting all offers and counteroffers in a timely manner, even when the property is subject to a contract of sale; (B) advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the licensee; (C) accounting in a timely manner for all money and property received; (D) keeping the parties fully informed regarding the transaction; (E) assisting the parties in complying with the terms and conditions of any contract including closing the transaction; (F) disclosing to all prospective buyers or tenants all adverse material facts actually known by the transaction broker, including but not limited to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the seller's or landlord's ability to perform under the terms of the contract; and (G) disclosing to any prospective seller or landlord all adverse

material facts actually known by the transaction broker, including but not limited to material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction; (3) comply with all requirements of this act and rules and regulations adopted hereunder; and (4) comply with any applicable federal, state and local laws, rules and regulations and ordinances, including fair housing and civil rights and rules and regulations. (c) Except as provided in subsection (d), the transaction broker is not required to disclose to any party to the transaction information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the party. (d) A transaction broker shall disclose to the party any facts actually known by the transaction broker that were omitted from or contradict any information included in a written report described in subsection (c). (e) If pursuant to subsection (b)(2)(B), the transaction broker advised the parties to obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of the transaction broker, no cause of action for any person shall arise against the transaction broker pertaining to such material matters. (f) In any transaction regarding the sale or lease of real estate other than commercial property or residential property of more than four units, the following information shall not be disclosed by a transaction broker without the consent of all parties: (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 party buying, selling, or leasing the property; (4) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered; or (5) 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. (g)(1) Except as provided in subsection (g)(2), in any transaction regarding the sale or lease of commercial property or residential property of more than four units, the following information may be disclosed by a transaction broker unless prohibited by the parties: (A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property; (B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property; (C) what the motivating factors are for any party buying, selling or leasing the property; or (D) that a seller, buyer, landlord or tenant will agree to financing terms other than those offered. (2) Any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party shall not be disclosed unless the disclosure is required by law or failure to disclose such information would constitute fraudulent

misrepresentation. (h) A transaction broker has no duty to conduct an independent inspection of the property for the benefit of any party to the transaction and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, buyer, tenant or qualified third party inspectors. (i) A transaction broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant. (j) A transaction broker may do the following without breaching any obligation or responsibility: (1) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant; (2) list competing properties for sale or lease; (3) show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and (4) serve as a single agent or subagent for the same or for different parties in other real estate transactions. (k) Information known to a transaction broker shall not be imputed to any party to the transaction or to any licensee within the brokerage firm engaged as a transaction broker. (l) A transaction broker may cooperate with other brokers or cooperate and pay compensation to other brokers but shall not engage any subagents. (L. 1997, ch. 65, § 1; L. 2006, ch. 159, § 4; July 1.)

KSA 58-3062(a)

58-3062. Prohibited acts. (a) No licensee, whether acting as an agent, transaction broker or a principal, shall: (1) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others. (2) Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061, and amendments thereto, convert such moneys to the licensee's personal use or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account. (3) Accept, give or charge any rebate or undisclosed commission. (4) Pay a referral fee to a person who is properly licensed as a broker or salesperson in Kansas or another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the Kansas or out-of-state licensee. (5) Represent or attempt to represent a broker without the broker's express knowledge and consent. (6) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property. (7) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent. (8) Offer real estate for sale or lease without the

knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent. (9) Induce any party to break any contract of sale or lease. (10) Pay a commission or compensation to any person, not licensed under this act, for performing any activity for which a license is required under this act. (11) Fail to see that financial obligations and commitments between the parties to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved. (12) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date. (13) Engage in fraud or make any substantial misrepresentation. (14) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon. (15) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing. (16) 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. (17) Fail without just cause to surrender any document or instrument to the rightful owner. (18) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement. (19) 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 days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement. (20) Fail to respond in a timely manner to any request from the commission or the commission's designee for documents or information that concerns directly or indirectly any real estate transaction or the licensee's real estate business. (21) Refuse to appear or testify under oath at any hearing held by the commission. (22) Demonstrate incompetency to act as a broker, associate broker or salesperson. (23) Except as provided by K.S.A. 40-2404, and amendments thereto, knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly

connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof. (24) Engage in the purchase of one-, two-, three- or four-family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein, including any equity or redemption interests, if: (A)(i) At the time of such purchase, the dwellings are subject to a right of redemption pursuant to foreclosure of a mortgage on such dwellings; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder or judgment creditor who held such mortgage; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan, regardless of whether the licensee is obligated to do so; (B)(i)the dwellings are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the mortgage as the payments come due, regardless of whether the licensee is obligated on the loan; or (C) the licensee fails to notify, at the time of rental, any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor. (25) Commit forgery or, unless authorized to do so by a duly executed power of attorney, sign or initial any contractual agreement on behalf of another person in a real estate transaction. (26) Enter into contracts with persons not licensed by the commission to perform services requiring a license under K.S.A. 58-3034 et seq., and amendments thereto, except as provided by K.S.A. 58-3077, and amendments thereto. (b) No salesperson or associate broker shall: (1) Except as provided in subparagraph (A) or (B), accept a commission or other valuable consideration from anyone other than the broker by whom the licensee is employed or with whom the licensee is associated as an independent contractor. (A) A salesperson or associate broker may accept a commission or other valuable consideration from a licensee who employs the salesperson or associate broker as a personal assistant provided that: (i) The licensee and the salesperson or associate broker who is employed as a personal assistant are licensed under the supervision of the same broker, and (ii) the supervising broker agrees in writing that the personal assistant may be paid by the licensee. (B) If a salesperson or associate broker has organized as an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation, the commission or other valuable consideration may be paid by the licensee's broker to such association, corporation, limited liability company, limited

liability partnership, partnership or professional corporation. This provision shall not alter any other provisions of this act. (2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents. (3)(A) Except as provided by subparagraph (B), be employed by or associated with a licensee at any one time other than the supervising broker who employs such salesperson or associate broker or with who the salesperson or associate broker is associated as an independent contractor. (B) An associate broker may be employed by or associated with more than one supervising broker at any one time if each supervising broker who employs or associates with the associate broker consents to such multiple employment or association. Such consent shall be on a form provided by the commission and shall not be effective until a signed copy of the completed form has been filed with the commission. (4) Except as provided by subsection (b), pay a commission or compensation to any person for performing any activity for which a license is required under this act. (5)(A) Fail to disclose to such salesperson's or associate broker's supervising broker or branch broker that such salesperson or associate broker is performing any activity for which a license is required under K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for which a license is required under K.S.A. 58-3036, and amendments thereto, outside the supervision of the supervising broker or branch broker. The provisions of this subsection shall not apply to any activity or person exempted from the real estate brokers' and salespersons' license act pursuant to K.S.A. 58-3037, and amendments thereto. (6) Fail to submit to the supervising broker or branch broker, within 10 business days, any document that must be maintained in the supervising broker's or branch broker's business records for each real estate transaction. The ten-day period shall commence when the document is executed by the client or customer or, if a signature is not required or is not obtained, upon presentation of a document to the client or customer. (c) No broker shall: (1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker. (2) Fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer. (3) Fail to properly supervise the activities of an associated or employed salesperson

or associate broker. (4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker. (5) Fail to provide to the principal a written report every 30 days, along with a final report, itemizing disbursements made by the broker from advance listing fees. (d)(1) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker, no listing broker shall: (A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or (B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit. (2) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker and the property was not listed with a broker, no broker for the buyer shall: (A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or (B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit. (3) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker and neither the seller nor buyer is represented by a broker, no transaction broker shall: (A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or (B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit. The commission may adopt rules and regulations to require that such purchase agreement which provides that the earnest money be held by an escrow agent other than a real estate broker include: (1) Notification of whether or not the escrow agent named in the purchase agreement maintains a surety bond; and (2) notification that statutes governing the disbursement of earnest

money held in trust accounts of real estate brokers do not apply to earnest money deposited with the escrow agent named in the purchase agreement. (e) No licensee shall: (1) Threaten to engage in or engage in physical abuse or engage in harassment towards: (A) A client or customer or a former client or customer; (B) another licensee; (C) commission members or staff; (D) staff of the office of administrative hearings; (E) staff from any real estate trade association or multiple listing service; or (F) any person from another business or industry whose services are requested or required as part of a real estate transaction. (2) threaten to file or file a lien on residential property; (3) conduct real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances; (4) be finally adjudicated by a federal or state agency and found to be guilty of a violation of a federal or state law regulating the real estate industry or regulating a closely related industry whose licensees or members are commonly involved in real estate matters; (5) be finally adjudicated by a federal or state agency and found to be guilty of a violation of a federal or state law prohibiting discrimination against any client or customer on the basis of color, race, gender, religion, national origin, age, disability or familial status; or (6) intentionally misappropriate or misuse any personal property or real property of a client or customer. (f) No applicant or licensee shall: (1) Engage in fraud or make any substantial misrepresentation to the commission; (2) commit forgery in any representation or document submitted to the commission; (3) sign or initial, on behalf of another person, any application, for or accompanying document submitted to the commission unless authorized to do so by a duly executed power of attorney; (4) interfere with any investigation, administrative proceeding, quasi-judicial proceeding or any other disciplinary matter of the commission, including, but not limited to: (A) Threatening to engage in or engaging in physical abuse or harassment toward any witness, complainant or individual listed in subsection (e)(1); (B) destroying evidence; (C) refusing or failing to appear or testify under oath at any hearing; or (D) refusing or failing to respond in a timely manner to any request from the commission or the commission's designee for documents or information that concerns directly or indirectly any real estate transaction or the licensee's real estate business; (5) fail without just cause to surrender any document or instrument to the rightful owner; or (6) demonstrate incompetency to act as a broker, associate broker or salesperson in dealings with the commission, including the repeated failure to: (A) Submit required forms to the commission in a timely and complete manner; (B) make available to the commission all records relating to the real estate business; or (C) comply with the provisions of this subsection. (g) A branch broker shall not be employed by or associated with more than one supervising broker at any one time unless each supervising broker who employs or associates with the branch broker consents to

such multiple employment or association. Such consent shall be on a form provided by the commission and shall not be effective until a signed copy of the completed form has been filed with the commission. (h) Nothing in this section shall be construed to grant any person a private right of action for damages or to eliminate any right of action pursuant to other statutes or common law. (L. 1980, ch. 164, § 29; L. 1986, ch. 209, § 14; L. 1989, ch. 167, § 7; L. 1991, ch. 163, § 5; L. 1992, ch. 120, § 1; L. 1993, ch. 241, § 6; L. 1995, ch. 252, § 20; L. 1996, ch. 212, § 7; Revived, L. 1997, ch. 65, § 13; L. 1997, ch. 65, § 14; L. 1998, ch. 93, § 74; L. 1999, ch. 119, § 86; L. 2000, ch. 102, § 4; L. 2002, ch. 72, § 1; L. 2004, ch. 67, § 1; L. 2004, ch. 180, § 6; L. 2005, ch. 179, § 19; L. 2006, ch. 159, § 2; L. 2008, ch. 155, § 5; L. 2009, ch. 7, § 4; L. 2010, ch. 104, § 10; L. 2015, ch. 21, § 3.)

Advertising - 58-3085 & 58-3086

58-3085. Limitations on advertising, when. (a) If the commission has not authorized another broker to act as the supervising broker or branch broker, all advertising under the supervising broker's or branch broker's name or trade name, including, but not limited to, signage, must be removed or covered within five calendar days after the expiration date or date of deactivation of the supervising broker's or branch broker's license or the effective date of the order of suspension, deactivation or revocation. (b) The provisions of this section shall be a part of and supplemental to the Kansas real estate brokers' and salespersons' license act. (L. 2007, ch. 88, § 15; L. 2009, ch. 7, § 9; July 1.)

58-3086. Advertising; prohibitions; requirements of; information disclosed; filling of agreements. (a) No licensee shall use any promotion or advertisement in any type of media that: (1) Is misleading or inaccurate as to any material fact or that in any way misrepresents any property, terms, values, policies or services of the business conducted; (2) includes the trade name, trademark, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so; (3) includes an office where real estate activity is conducted that is not designated as a primary office or branch office with the

commission; or (4) promotes the licensee's business in a manner that could confuse or mislead the public by using terms or a trade name or a business name that could be construed as the trade name or business name of a supervising broker. (b) Except as specified by subsection (c), all advertising conducted by a licensee shall: (A) Be conducted under the direct supervision of the supervising broker or branch broker; (B) include the name of the supervising broker's trade name or business name by prominently and conspicuously displaying or announcing the supervising broker's trade name or business name in a readable and identifiable manner; and (C) include any other information that the supervising broker or branch broker considers necessary. (c) The advertising of property for sale, lease or exchange shall not be required to include the supervising broker's trade name or business name if the property is not listed with a broker and if either of the following conditions is met: (1) The property is personally owned by a licensee; or (2) a licensee has an interest in the property. (d) If authorized by the supervising broker or the branch broker, an employed or associated salesperson or associate broker may include in the advertisement: (1) The contact information for the employed or associated salesperson or associate broker; (2) a name or team name which cannot be construed as a supervising broker's trade name or business name; (3) a slogan which does not include terms that are confusing to the public or which cannot be construed as a supervising broker's trade name or business name; and (4) a domain name or website which does not include terms that are confusing to the public or which cannot be construed as a supervising broker's trade name or business name. (e) Unless property personally owned by a licensee or in which a licensee has an interest is listed with a supervising broker or branch broker, all advertising caused by the licensee regarding the property shall be done in a manner that clearly informs the public that a real estate licensee is the owner of or has an interest in the property advertised. (f) If a licensee does not have a buyer's agency agreement and is soliciting property for purchase for the benefit of the licensee or an entity in which the licensee has an interest, all advertising by the licensee that contains a solicitation to purchase property from potential sellers shall clearly inform the public that a real estate licensee is involved in the solicitation of potential sellers of property. (g) Each supervising broker who enters into an agreement that authorizes the supervising broker to utilize the name or trade name of any person or entity in the conduct of the supervising broker's real estate business shall file a copy of the agreement with the commission. (h) This section shall be part of and supplemental to the real estate brokers' and salespersons' license act. (L. 2008, ch. 155, § 6; L. 2009, ch. 7, § 10; July 1.)

Branch Office – 58-3035 definitions, 58-3060 Primary Office

58-3035. Definitions. As used in this act, unless the context other-wise requires: (a) “Act” means the real estate brokers’ and salespersons’ license act. (b) “Advance listing fee” means any fee charged for services related to promoting the sale or lease of real estate and paid in advance of the rendering of such services, including any fees charged for listing, advertising or offering for sale or lease any real estate, but excluding any fees paid solely for advertisement or for listing in a publication issued for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the listing. (c) “Associate broker” means an individual who has a broker’s license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (f). (d) “Branch broker” means an individual who has a broker’s license and who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office. (e) “Branch office” means a place of business other than the principal place of business of a broker. (f) “Broker” means an individual, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate: (1) Sells, exchanges, purchases or leases real estate. (2) Offers to sell, exchange, purchase or lease real estate. (3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate. (4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange. (5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction. (6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate. (7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate. (8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate. (9) Engages in the business of charging an advance listing fee. (10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list. (g) “Commission” means the Kansas real estate commission. (h) “Exchange” means a type of sale or purchase of real estate. (i) “Interest” means: (1) Having any type of ownership in the real estate involved in the transaction; or (2) an officer, member, partner or shareholder of any

entity that owns such real estate excluding an ownership interest of less than 5% in a publicly traded entity. (j) "Lease" means rent or lease for nonresidential use. (k) "Licensee" means any person licensed under this act as a broker or salesperson. (l) (1) "Office" means any permanent location where one or more licensees regularly conduct real estate business as described in subsection (f) or a location that is held out as an office. (2) "Office" does not mean a model home office in a new home subdivision if the real estate transaction files are maintained in the primary office or branch office. (m) "Primary office" means a supervising broker's principal place of business for each company created or established by the broker. (n) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or non-freehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests, and rights of way and easements acquired for the purpose of constructing roadways, pipelines, conduits, wires and facilities related to these types of improvement projects for private and public utilities, municipalities, federal and state governments, or any political subdivision. For purpose of this act, any rights of redemption are considered to be an interest in real estate. (o) "Salesperson" means an individual, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (f). (p) "Supervising broker" means an individual, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042, and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors. (L. 1980, ch. 164, § 2; L. 1986, ch. 209, § 1; L. 1988, ch. 197, § 1; L. 1989, ch. 167, § 1; L. 1993, ch. 241, § 1; L. 1995, ch. 149, § 1; L. 1996, ch. 212, § 19; Revived, L. 1997, ch. 65, § 3; L. 1997, ch. 65, § 4; L. 2000, ch. 102, § 2; L. 2006, ch. 151, § 1; L. 2008, ch. 155, § 1; L. 2009, ch. 7, § 1; L. 2010, ch. 104, § 1; July 1.)

58-3060. Brokers; principal place of business, requirements. (a) Each licensed resident broker shall have and maintain a principal place of business in the state of Kansas, or in an adjoining state with the written permission of the commission, which shall serve as such broker's primary office for the transaction of business. Each licensed nonresident broker shall have and maintain

a principal place of business in the broker's state of residence or in the state of Kansas which shall serve as such broker's primary office for the transaction of business. (b) A supervising broker shall be designated to supervise the primary office and the activities of salespersons and associate brokers assigned to the primary office. Each additional office or place of business, other than the primary office, shall be designated a branch office and a branch broker shall be designated to supervise such office and the activities of salespersons and associate brokers assigned to such office. (c) A branch broker's license and those of salespersons and associate brokers assigned to the branch office shall be displayed in the branch office. All other licenses of brokers, salespersons and associate brokers shall be displayed in the broker's primary office. (d) A broker shall give written notice to the director of any change in location of any office of the broker, by returning licenses for cancellation and reinstatement under the new location as provided by K.S.A. 58-3047 and amendments thereto. (e) The requirement of maintaining an office as provided by this section shall not apply to an associate broker, to a broker whose license is on deactivated status or to an officer, member, partner, shareholder or employee of an association, corporation, limited liability company, limited liability partnership, partnership or professional corporation who is not designated as the supervising broker of an office of the association, corporation, limited liability company, limited liability partnership, partnership or professional corporation. (L. 1980, ch. 164, § 27; L. 1986, ch. 209, § 12; L. 2010, ch. 104; § 8; July 1.)

Telling people to get legal advice - regulation 86-3-9

86-3-9. Legal counsel. Each broker shall recommend to each client or customer that an attorney be retained by the client or customer to answer any legal questions involved in any real estate transaction. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-30,106, 58-30,107, and 58-30,113; effective Jan. 1, 1966; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Nov. 16, 2007.)

Disclosure of relationships with people – regulation 86-3-19

86-3-19. Disclosure of interest in property purchased, sold, leased or exchanged. Disclosure of interest in property purchased, sold, or leased. (a) Each licensee shall disclose in the real estate contract or lease any interest that the licensee or the licensee's immediate family member has or will have in the following, as applicable: (1) The real estate being sold or leased by the seller or lessor; and (2) the real estate being purchased or leased by the buyer or lessee. (b) For purposes of this regulation, "interest" shall have the meaning specified in K.S.A. 58- 3035, and amendments thereto, and "immediate family member" shall mean spouse, parent, child, or sibling. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 2015 Supp. 58- 3035 and 58-3062; effective May 1, 1982; amended, T-86-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended Nov. 14, 2016.)

Kansas Real Estate Commission Guidelines on Activities by Unlicensed Personnel

The following guidelines have been prepared in response to inquiries regarding the use of unlicensed personnel to perform certain tasks. While the guidelines address many of the situations faced by real estate licensees and their unlicensed co-workers in daily practice, they are not intended to apply universally in all circumstances. Brokers are advised to consult their attorneys when in doubt.

Unlicensed personnel employed in a real estate office may:

- Answer the phone and forward calls to a licensee.
- Submit listings and changes to a multiple listing service if the listings or changes are based upon data compiled and provided by a licensed broker or salesperson.
- Follow up on loan commitments after a contract has been negotiated.
- Assist a broker or salesperson in assembling documents for closings.
- Secure documents (public information) from courthouse, sewer district, water district, etc.
- Have keys made for company listings. Place "for sale" signs on property at the direction of a broker or salesperson with the firm.
- Write ads and prepare flyers and promotional information for approval by licensee and supervising broker and place advertising.
- Type offers, contracts and leases from drafts prepared by a broker or salesperson with the

firm.

- Monitor licenses and personnel files. Compute commission checks.
- Maintain trust account records under the supervision of the broker. (The broker remains responsible for compliance with the license act and regulations.)
- Order items of routine repair as directed by a licensee with the firm.
- Act as courier service to deliver or pick up documents, keys, etc.
- Measure house under supervision of licensee. (The licensee and supervising broker remain responsible for accuracy of measurements.)
- Schedule appointments for a licensee to show listed property.
- Furnish publicly available information on the listings of the employing brokerage to real estate licensees affiliated with other brokerage firms and members of the public upon an inquiry about a particular property. Such unlicensed persons **MAY NOT** explain or interpret any information displayed on the advertisements or listing sheets of the property listings.
- Host open houses for licensees if serving strictly as a monitoring host. Greet prospective buyers and hand them printed information prepared by the builder, owner or licensee. **MAY NOT** explain or interpret information, discuss or make representations about the terms of sale, the home or property, or solicit new listings or new clients. **ALL** questions must be referred to the owner or a licensee.*

* **NOTE:** The commission does not recommend that unlicensed individuals host open houses; however, within very narrow restrictions, the activity is permissible under the license act and is therefore included in this list. Brokers who choose to allow an unlicensed person to host an open house are strongly urged to closely monitor such activity. If the unlicensed person goes beyond what is permissible, the broker remains responsible.

Unlicensed personnel may not:

- May not conduct any activities that require a license under K.S.A. 58-3035(f) including, but not limited to, negotiating contracts and leases on behalf of a licensee.
- Explain or interpret information concerning properties listed with the firm, except to confirm that the property is listed, identify the listing broker or salesperson and furnish publicly available information on the listings of the employing brokerage to real estate licensees affiliated with other brokerage firms and members of the public upon an inquiry about a particular property.
- Show property.

- Discuss anything related to the property or related to its purchase, except to confirm the property is listed, identify the listing broker or salesperson and furnish publicly available information on the listings of the employing brokerage to real estate licensees affiliated with other brokerage firms and members of the public upon an inquiry about a particular property.
- Discuss or explain a contract, listing, lease agreement or other real estate document with anyone outside the firm.
- Negotiate or agree to any commission, commission split, or referral fee on behalf of a licensee.
- A licensee may not, as a personal assistant for another licensee or as a secretary/employee, perform any activity which requires a license while licensed with another firm.

(Original version published in August 1992 KREC Newsletter: rev. 11/10/11)