

Kansas Association of REALTORS® Presents

# Kansas Real Estate License Law & NAR Code of Ethics

REALTOR® Continuing Education

By Vernon L. Jarboe © Copyright 2012



**KANSAS ASSOCIATION**

**OF**

**REALTORS®**

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## QUICK STUDY

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### Kansas License Law and NAR Code of Ethics

This course has been approved by the Kansas Real Estate Commission for 4 hours of elective continuing education credit for both Salespersons and Brokers. It also fulfills NAR's REALTOR® Code of Ethics training mandate, which is due by December 31, 2016!

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*This course counts as elective credit for  
Real Estate Brokers and Salespersons in Kansas.*

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 from KEYNOTE PROFESSIONAL DEVELOPMENT SERIES 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, be sure to click the “finish” button and that will take you to the screen to fill out the information for your certificate. Once you create the certificate, the system will email it to you, KREC and KAR.

## **KS REAL ESTATE LICENSE LAW AND NAR CODE OF ETHICS QUICK STUDY- PART I**

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For the purpose of clarification:

National Association Code of Ethics sections will be referred to by article number and will be *italicized*.

**K.S.A. 58-** (Kansas Statutes Annotated) followed by the number or letter of the law will indicate where Kansas Real Estate Brokers' and Salespersons' License Act or Brokerage Relationship in Real Estate Transactions Act are quoted in the manuscript.

**K.A.R. 86-** (Kansas Administrative Regulations) followed by the number or letter of the regulation will indicate where Kansas Real Estate Commission Rules and Regulations are quoted in the manuscript.

- ☐ Will indicate where Vern has added information or summarized the K.S.A. and K.A.R. for you.

## **COURSE OUTLINE**

- A. LICENSE LAW OVERVIEW AND CODE OF ETHICS**
- B. COMPARISON BETWEEN THE TWO IN APPLICATION**
- C. ENFORCEMENT OF LICENSE LAW**
- D. ENFORCEMENT OF CODE OF ETHICS**
- E. ARBITRATION**

### **A. LICENSE LAW OVERVIEW AND CODE OF ETHICS**

- ☐ **Protect the Public** – Both sets of rules are intended to protect the public. The law accomplishes this by rules enforced through licensee discipline up to and including loss of license. Ethics rules do not impact a license but may impact membership in the REALTORS<sup>®</sup> organization. Both can have more limited impact including fines or other sanctions.
- ☐ It is important to recognize that there may be conflicts between the Code of Ethics and the License Law. Where there is a conflict (or at least you perceive one) remember the license law always comes first. For example, the Code of Ethics would approve dual agency while Kansas law does not. This conflict arises because the Code of Ethics sets a standard across the nation and some states still allow dual agency. In Kansas one may not, therefore, practice dual agency.
- ☐ The Code of Ethics also has rules to Guide Relations Between REALTORS<sup>®</sup> and members of the Public, between REALTORS<sup>®</sup> and their Clients and Customers and REALTORS<sup>®</sup> and other REALTORS<sup>®</sup>.
- ☐ The Law operates to Supervise Industry through the License Law found in Kansas Law at K.S.A. 58-3034 and the statutes that follow, regulating Agency Relations in K.S.A. 58-30,101 and following and through interpretations of both sets of law in the Regulations adopted by the Kansas Real Estate Commission (KREC) and found in K.A.R. 86-1-1 and following.

### **B. COMPARISON BETWEEN THE LAW AND THE CODE OF ETHICS**

- ☐ The Code of Ethics applies only to members of the National Association of REALTORS<sup>®</sup> (NAR). Non-member licensees are not required to comply with the Code of Ethics rules. Submission to this additional set of rules is voluntary and applies only when you join the local board of REALTORS<sup>®</sup> and become a member at the local, state and national level. Only membership in the National

Association of REALTORS® permits you to call yourself a REALTOR®, use the word REALTOR® and the trademark  associated with your name and as descriptive of your practice and compliance with this higher standard of conduct. You become a REALTOR® by joining and paying your dues.

### **License Law On Applies To All Who Hold The License.**

#### **☐ When do you need a license?**

Many activities are related to real estate but do not require a license. Managing real estate does not require a license, leasing residential real estate does not require a license and selling your own real estate does not require a license. However, one cannot earn a fee for doing anything that requires a license nor can a licensee pay an unlicensed person for services that require a license. For example, a licensee cannot pay an unlicensed person for referrals.

#### **K.S.A. 58-3035. Definitions.**

- (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.

### ☐ **How do you get a license?**

In addition to paying the application fee and taking a test there is an application with detailed background questions. In the past applicants were taken at their word on criminal background but now fingerprints are required so that a comprehensive check can be performed.

### **K.S.A. 58-3039. Licensure; application; criminal history record check; qualifications; examination; temporary salesperson's license, issuance, cancellation, late fee.**

- (a) Any person desiring to act as a broker or salesperson must file a written application for a license with the commission or, if required by the commission, with the testing service designated by the commission. The application shall be in such form and detail as the commission shall prescribe.
- (b) (1) As part of an application for an original license or in connection with any investigation of any holder of a license, the commission shall require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The commission shall require the applicant to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The commission shall use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license.

### ☰ How Do You Keep A License?

When renewing a license not only is an application required and a fee to be paid but K.S.A. 58-3046a requires continuing education credits be proven. All of this is required 30 days in advance of the renewal date in order to avoid a required late fee.

#### **K.S.A. 58-3045. Expiration of license; renewal; reinstatement and renewal of license.**

- (a) Except for a temporary salesperson's license issued pursuant to subsection (i) of K.S.A. 58-3039, and amendments thereto, each license issued or renewed by the commission shall expire on a date determined in accordance with a schedule established by rules and regulations of the commission, which date shall be not more than two years from the date of issuance or renewal. Except as otherwise provided by this act, applicants for issuance or renewal of a license must satisfy all applicable requirements prior to issuance or renewal of the license.
- (b) (1) Except for a temporary salesperson's license issued pursuant to subsection (i) of K.S.A. 58-3039, and amendments thereto, each license shall be renewable upon the filing of a renewal application on or before the renewal date, which is the last calendar day of the month preceding the license expiration date. Such application shall be made on a form provided by the commission and accompanied by
  - (A) the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, and
  - (B) evidence of compliance with the requirements of K.S.A. 58-3046a and amendments thereto or the licensee's license with the licensee's request that the license be deactivated on the renewal date pursuant to K.S.A. 58-3049, and amendments thereto.

### ☰ How Do You Lose A License?

Not only do violations of the license law, brokerage relationship law or KREC regulations subject a licensee to discipline but violations of fair housing law, criminal conduct, lying on an application, discipline in another state or refusing compliance with a KREC orders all can lead to discipline.

**K.S.A. 58-3050. Refusal to grant or renew; revocation, suspension or restriction of license; censure of licensee; disciplinary actions; civil fines; aggravating circumstances; procedures; recovery of actual costs and attorney fees.**

- (a) Except as provided in subsection (b) and (c), the commission may refuse to grant or renew a license and the license of any licensee may be revoked, suspended, conditioned or restricted or a licensee may be censured, if:
- (1) The licensee has committed a violation of this act or rules and regulations adopted hereunder, or the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder;
  - (2) the licensee has entered a plea of guilty or nolo contendere to, or has been convicted of any misdemeanor which reflects on the licensee's honesty, trustworthiness, integrity or competence to transact the business of real estate;
  - (3) the licensee has been finally adjudicated and found to be guilty of violation of the federal fair housing act (42 U.S.C. 3601 et seq.) or K.S.A. 44-1015 through 44-1029, and amendments thereto;
  - (4) the licensee has obtained or reinstated, or attempted to obtain or reinstate, a license by false or fraudulent representation;
  - (5) the licensee has violated any lawful order or directive of the commission; or
  - (6) the licensee has committed a violation in another state and disciplinary action taken against such licensee resulted in the suspension, probation or revocation of such licensee's real estate license in such other state.

**Brokerage Relationships**

☰ **How do you start agency?**

Agency relations only begin with a written agreement. The law also sets minimum requirements for that agreement. Because of the requirement that agency starts with a written agreement under the Brokerage Relationships in Real Estate Transactions Act (BRETA) a real estate agent is different than a common law agent where one can accidentally become bound to agency duties.

**K.S.A. 58-30,102. Definitions.** As used in the brokerage relationships in real estate transactions act, unless the context otherwise requires:



- (b) "Agency" means every relationship in which a broker acts for or represents another, by the latter's express written authority, in a real estate transaction. "Agency" also means the relationship in which a broker, by verbal authorization pursuant to subsection (d)(2) of K.S.A. 58-30,103, and amendments thereto, acts for or represents any agency of the federal government in the sale of property owned by the federal agency.
- (c) "Agency agreement" means a written agreement setting forth the terms and conditions of the relationship between a broker and the broker's client.

■ **What do you do as an agent?**

The duties of an agent are defined by BRETA with a list of minimum requirements. It is important that those duties are listed in the agency agreement and, of course, that the agent performs the duties as agreed.

**K.S.A. 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.

■ **How does a transaction broker act?**

A transaction broker on the other hand has many of the same duties EXCEPT that since there is no “client” there is **no duty** to “promote the interests of the client with the utmost good faith, loyalty and fidelity”.

**0K.S.A. 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).

☐ **How do you end agency or transaction brokerage?**

Agency relationships begin when the written agreement is entered and end on closing, expiration by time or “authorized termination” which would include agreement to cancel.

**K.S.A. 58-30,104. Termination of relationships.**

- (a) (1) The agency relationships set forth in K.S.A. 58-30,103, and amendments thereto, shall commence at the time that the client engages the broker, and shall continue until:
  - (A) A transaction is closed according to the agreement of the parties; or
  - (B) if a transaction is not closed according to the agreement of the parties, the earlier of:
    - (i) Any date of expiration agreed upon by the parties in the agency agreement or in any amendments thereto; or
    - (ii) any authorized termination of the relationship.

### ☐ **What duties do you have after relationships are over?**

Even after your agency relationship is over there are duties that survive. One such duty is the duty to protect confidential information even after your agency relationship ends. Buyers and sellers need to be assured they are free to share with a licensee their secrets. This is NOT information about the property but information personal to the consumer related to their personal needs and wants in selling the property.+0

### **K.S.A. 58-30,104. Termination of relationships.**

- (a) (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:
- (A) To account for all moneys and property relating to the engagement; and  
(B) to keep confidential all confidential information received during the course of the engagement unless:
- (i) The client permits the disclosure by subsequent word or conduct;  
(ii) such disclosure is required by law; or  
(iii) the information becomes public from a source other than the broker.

### **COMPARING LICENSE LAW WITH THE CODE OF ETHICS**

- **Discussion of Elements Of License Law**
  - **How are some license law issues the same?**
  - **How are some license law issues less stringent?**
  - **What do we do in cases of conflict?**
- ☐ Some license law requirements and ethics rules impose essentially the same burden on a licensee (the duty to promote the interest of the client) and the duty to keep client funds in a separate trust account. In other cases the obligations of the law are less stringent such as advertising rules that forbid misrepresentation while the code of ethics forbids not only misrepresentations but also exaggeration. There are few places where there is a conflict then the law controls.

☐

### ✓ **LICENSE LAW AND AGENCY COMPARED WITH ARTICLE 1**

### **Article 1**

*When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client.*

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*This obligation to the client is primary, but it does not relieve REALTORS<sup>®</sup> of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS<sup>®</sup> remain obligated to treat all parties honestly.*

### **K.S.A. 58-30,102. Definitions.**

- ☐ (b) states that to have an agency relationship you must have a written agreement.

### **K.S.A. 58-30,103. Written Agency Agreements; Written Transaction Brokerage Agreements.**

- ☐ details the requirements of a written agency agreement.

(f) An agency agreement or written transaction brokerage agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, any limitation on the duty of confidentiality and the terms of compensation, and shall refer to the duties and obligations pursuant to K.S.A. 58-30,106, 58-30,107 or 58-30,113, and amendments thereto. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the customer or client at the time the customer or client signs the agreement. If, at the time the customer or client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the customer or client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker

(g) An agency agreement with a seller or landlord shall include any potential for the seller's agent or landlord's agent to act as a transaction broker;

(2) for an affiliated licensee to act as a designated agent for the buyer and the designated agent's supervising broker or branch broker, and an affiliated licensee if applicable, to act as a transaction broker; or

for the broker to designate an affiliated licensee to act as the designated agent for the seller on the broker's personal listing pursuant to subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.

- ☐ K.S.A. 58-30,106. & 107 Describe the duties of seller and buyer agency (seller duties listed above. Buyer duties very similar (opposite side of deal).

- ☐ The list of duties imposed by BRETA on a buyer agent are set out below – if we were to lay the seller agent duties side by side we would see they are roughly the same only tailored to the opposite side of the transaction. Similarly transaction broker duties are similar but modified to remove the obligation to “promote the interest of the client”. When reading this list ask yourself if this is how you act.

**K.S.A. 58-30,107. Minimum Requirements Of Buyer's 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.

✓ **LICENSE LAW COMPARED TO ARTICLE 2**

**Article 2**

*REALTORS<sup>®</sup> shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS<sup>®</sup> shall not,*

*however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (Amended 1/00)*

- K.S.A. 58-3062(a)(2), (3) & (4) Prohibits misappropriation of money
- Both the license law and code of ethics prohibit the obvious – thou shalt not lie, deceive or steal from your clients and customers. The code is more specific in prohibiting exaggeration. The only license law implication regarding exaggeration would be if an exaggeration gets to be so big it becomes a lie – probably something you can only see by looking back on a deal.

### **K.S.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.

### ✓ **LICENSE LAW AND AGENCY COMPARED WITH ARTICLE 3.**

#### **Article 3**

*REALTORS<sup>®</sup> shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the*

*obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)*

- ☐ K.S.A. 58-3062(a)(5) prohibits representing a broker without broker's permission
  - ☐ Relationships with other brokers are recognized as important under the Code of Ethics but the license law says very little. The business, as practiced by most, involves cooperation with other brokers but the license law imposes no burden in that area.
  - ☐ K.S.A. 58-30,106(j) Requires cooperation with all brokers if cooperating with any brokers unless instructed by client
- (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 or a listed property from another licensee specifically instructed by the seller in writing. The broker shall provide a copy of the written instructions to another licensee upon request.

### ✓ LICENSE LAW COMPARED TO ARTICLE 4.

#### Article 4

*REALTORS<sup>®</sup> shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS<sup>®</sup> shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. (Amended 1/00)*

- ☐ K.S.A. 58-3062(a)(15) Requires disclosure of ownership interest in property when selling or buying
- ☐ Both the law and ethics require disclosure of self-dealing and expand that to include family with similar language. However, the ethics rules recognize that extension as applying to related entities. This is not to say that a wholly owned



company would save you from a law violation because of the definition of an “interest” in property.

**K.S.A. 58-3062. Prohibited Acts.**

(a)(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.

**K.A.R. 86-3-19. Disclosure of interest in property purchased, sold, leased or exchanged.**

(a) A licensee shall not buy, sell, lease, or exchange real estate in which the licensee, an immediate family member of the licensee, or both the licensee and an immediate family member of the licensee have an interest without disclosing the following in the real estate contract or lease:

- (1) The licensee's licensure status;
  - (2) specification of whether the licensee has an interest in the property or transaction;
  - (3) specification of whether the licensee's immediate family member has an interest in the property or transaction.
- (b) For purposes of subsection (a), "interest" shall have the meaning specified in K.S.A. 58-3035, and amendments thereto.
- (c) For purposes of subsection (a), "exchange" shall have the meaning specified in K.S.A. 58-3035, and amendments thereto.
- (d) For purposes of subsection (a), "immediate family member" shall mean spouse, parent, child, or sibling.

**Article 5**

*REALTORS<sup>®</sup> shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.*

- ▣ Arguably, Article 5 is an extension to the limits of Article 4 and there is no comparable section in the law. However, the personal and family member sections above, in the law, may well be included in what this article would also prohibit.

✓ **LICENSE LAW COMPARED TO ARTICLE 6 & 7.**

**Article 6**

*REALTORS<sup>®</sup> shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.*

*When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS<sup>®</sup> shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTORS<sup>®</sup> or REALTORS<sup>®</sup>'s firm may receive as a direct result of such recommendation. (Amended 1/99)*

**Article 7**

*In a transaction, REALTORS<sup>®</sup> shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTORS<sup>®</sup>'s client or clients. (Amended 1/93)*

- ▣ K.S.A. 58-3062 (a)(23) Prohibits receipt of kickbacks from title insurance
- ▣ The ethics rules on kickbacks without disclosure are more general while the law rules are more specific. Both sets of rules are also already covered in the rules under the Real Estate Settlement and Procedures Act (RESPA) where there are broad prohibitions on this conduct.

**K.S.A. 58-3062. Prohibited Acts.**

(a)(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.

✓ **LICENSE LAW COMPARED TO ARTICLE 8.**

**Article 8**

*REALTORS<sup>®</sup> shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.*

- ☐ K.S.A. 58-3062 (a)(19) Requires deposit money to trust within 5 business days – no licensee shall . . .

**K.S.A. 58-3062. Prohibited Acts.**

(a)(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.

✓ **LICENSE LAW AND AGENCY COMPARED WITH ARTICLE 9.**

**Article 9**

*REALTORS<sup>®</sup>, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.  
(Amended 1/04)*

**K.S.A. 58-3062. Prohibited Acts.**

- ☐ (a)(11) requires that parties' obligations be put in writing

- (a)(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.
- ☐ (a)(12) minimum requirements of contract- price, payment method, description of property and closing date
- (a)(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.
- ☐ (a)(16) requires disclosure of closing costs
- (a)(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.
- ☐ (a)(25) prohibits forgery and requires power of attorney
- (a)(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.
- ☐ (c)(2) broker obligated to make sure parties get closing statement

✓ **LICENSE LAW AND EXPERTISE COMPARED WITH ARTICLE 11.**

**Article 11**

*The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.*

*REALTORS® shall not undertake to provide specialized professional services*

*concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/10)*

**K.S.A. 58-3062 Prohibited Acts.**

(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.

☐ (a)(22) Licensees are required to avoid incompetency

☐ (c)(3) Brokers are obligated to supervise agents

- (3) No broker shall: . . . Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

✓ **LICENSE LAW COMPARED TO ARTICLE 12.**

☐ The requirement that advertising be clear and free from falsehood carries over into both law and ethics. Both sets of rules also prohibit what the law calls “blind ads” where the fact that the communication comes from a licensee is specifically required.

**Article 12**

*REALTORS<sup>®</sup> shall be honest and truthful in their real estate communications and*

*shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 1/08)*

**K.S.A. 58-3086. Advertising; Prohibitions; Requirements Of; Information Disclosed; Filing 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.

**K.A.R. 86-3-7 Advertising.**

- (a) All advertising, except on property which is not listed with a broker and which is personally owned by a licensee or in which a licensee may have an interest, shall include the name of the broker by using the broker's trade or business name and such other information as the broker considers necessary.

The use of only a post office box number, telephone number or street address shall be deemed a violation of K.S.A. 58-3062 (a)(1).

- (b) Unless property personally owned by a licensee or property in which a licensee may have an interest is listed with a broker, all advertising caused by the licensee on such property shall be done in such a manner as to clearly inform the public that a real estate broker, associate broker or salesperson is the owner of or has an interest in the property advertised.
- (c) A real estate broker who enters into an agreement which authorizes the broker to utilize the name or trade name of any other person in the conduct of the broker's real estate business shall file a copy of such agreement in the public records of the Commission. The term "trade name" shall include, but not be limited to, trademark, service mark or trade identification. Failure to comply with this section shall be deemed a violation of K.S.A. 58-3062(a)(1).
- (d) A broker shall not advertise or promote the broker's business in a manner that would confuse, hinder or mislead the public as to the identity of the broker responsible For the debts and liabilities of the business or entity. Violation of this section shall be deemed a violation of K.S.A. 58-3062(a)(1).

✓ **LICENSE LAW COMPARED TO ARTICLE 13.**

- ☐ The importance of making sure consumers know they can and should consult with an attorney is found in both sets of rules. The license law puts it more in the context of a notice where the ethics rules describe it as a suggestion to the consumer.

**Article 13**

*REALTORS<sup>®</sup> shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.*

**K.A.R. 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.



**MISCELLANEOUS LICENSE LAW SECTIONS**

- ☐ Several noteworthy sections of the law have no comparable section in the code of ethics. Most of these are directed to situations where KREC needs the rule to help regulate the industry.

**K.A.R. 86-3-8. Brokerage Agreements.**

- ☐ Listing agreements cannot have automatic extension

**K.A.R. 86-3-15. Reporting of Information.** Each licensee shall report any of the following circumstances to the commission, in writing and within 10 days of the date of occurrence:

- (1) Any litigation filed by or against the licensee or any real estate company owned in whole or in part by the licensee relating to the business of buying, selling, exchanging, or leasing real estate or to any activity listed in the definition of "broker" in K.S.A. 58-3035 and amendments thereto. The licensee shall provide a copy of the petition or complaint setting forth the allegations;
  - (2) disposition of any litigation reported pursuant to paragraph (a)(1);
  - (3) any court judgment filed against the licensee or any real estate company owned in whole or in part by the licensee;
  - (4) any charge of, arrest or indictment for, plea of guilty or nolo contendere to, or conviction of any of the following:
    - (A) Any misdemeanor that reflects on the licensee's honesty, trustworthiness, integrity, or competence to transact the business of real estate; or
    - (B) any felony;
  - (5) any change in the licensee's name;
  - (6) any change in the licensee's residence address;
  - (7) any denial by another jurisdiction of an application made by the licensee for a broker or salesperson license;
  - (8) any suspension or revocation of, or any other disciplinary action taken by another jurisdiction against a broker or salesperson license held by the licensee; or
  - (9) any denial, suspension, revocation, voluntary surrender, or any other disciplinary action taken by the state of Kansas or another jurisdiction against any professional or occupational license or certificate held by the licensee.
- (b) Each supervising broker for a partnership, association, or corporation whose members or officers are licensed pursuant to K.S.A. 58-3042, and amendments

thereto, shall be responsible for reporting the information required by this regulation as it relates to the partnership, association, or corporation.

- (c) Each supervising broker and branch broker shall report to the commission any information pursuant to paragraph (a)(4) that is applicable to any associated or employed salesperson or associate broker. This report shall be submitted in writing within 10 days of the date that knowledge of the information comes to the attention of the broker.

**K.A.R. 86-3-26 Real Estate Brokerage Relationships Brochure.** As required by K.S.A. 58-30,110, and amendments thereto, each licensee shall give any prospective buyer or seller a brochure entitled “Real estate brokerage relationships.” Each brokerage firm may either obtain a copy of this brochure from the Commission for reproduction and use by its affiliated licensees or design a brochure that contains the minimum information contained in subsections (a), (b), (c), and (d). If a brokerage firm designs its own “Real estate brokerage relationships” brochure, the brochure may be in a format determined by the brokerage firm and may include the company name, company logo, and an explanation of the firm's brokerage relationships policy.

### C. ENFORCEMENT OF LICENSE LAW

- ☐ While both the Realtor® Association and KREC can fine, censure, and restrict your activities only KREC can take your license. The association can deal with your membership and report your conduct to KREC but not take your license.

#### **KREC Penalties**

- ☐ K.S.A. 58-3050 Violations of license law result in fines, revocation, suspension, restriction or censure.
- ☐ K.S.A. 58-3056 You can be assessed the costs of a hearing.

**K.S.A. 58-3056. Costs of hearing; assessment; itemization.** The costs of any hearing before the commission may be assessed against the licensee or applicant if the order of the commission is adverse to the licensee or applicant. The commission may reduce any such assessment to judgment by filing a petition in the district court of Shawnee county. No license shall be

reinstated, renewed or issued if an assessment for costs has not been paid by the holder of or applicant for such license. Costs shall include:

- (a) Statutory fees and mileage of witnesses attending a hearing or for the taking of depositions used as evidence;
- (b) reporter's or stenographic charges for the taking of depositions used as evidence or for transcripts of the hearing;
- (c) expenses for audits, appraisals, surveys and title examinations; and
- (d) such other charges authorized to be taxed as costs, as specified by K.S.A. 60-2003 and amendments thereto.

## **D. ENFORCEMENT OF CODE OF ETHICS**

### **Article 14**

*If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. (Amended 1/99)*

#### ☐ Ethics proceedings

- ◆ A member of the public or a Realtor® who believes another REALTORS® member has violated an article of the Code of Ethics and Standards of Practice may request a Professional Standards Hearing.
- ◆ In Kansas, Professional Standards complaints are handled at the local board level, although some states do have Statewide Professional Standards panels.

#### ☐ Ethics Complaint Process

- ◆ First a complaint is received and the board requests written statements from complainant and respondent.
- ◆ Responses (which generally do not identify the complainant or respondent) are then reviewed by the local board Grievance Committee. If the Grievance Committee members believe a violation of the Code of Ethics may have occurred, the case is set for hearing. If no violation is believed to have occurred, the case is dismissed.

- ◆ When a case is set for hearing, the complainant and respondent are given the opportunity to challenge members of the proposed hearing panel. Once an acceptable panel has been established, a hearing date is set.

### ☐ Ethics Hearing

- ◆ Both complainant and respondent may have legal or other representation at their own expense. The complaint is heard by the panel and a ruling is made. Although the panel has no ability to address licensure issues, the panel has the ability to issue a warning or address membership in the REALTORS<sup>®</sup> association. If the Grievance Committee believes a license law violation has occurred, they may refer the case to the Kansas Real Estate Commission.

## E. ARBITRATION

### Article 17

*In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS<sup>®</sup> (principals) associated with different firms, arising out of their relationship as REALTORS<sup>®</sup>, the REALTORS<sup>®</sup> shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS<sup>®</sup> shall submit the dispute to arbitration in accordance with the policies of their Board rather than litigate the matter.*

*In the event clients of REALTORS<sup>®</sup> wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS<sup>®</sup> shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.*

*The obligation to participate in mediation or arbitration contemplated by this Article includes the obligation of REALTORS<sup>®</sup> (principals) to cause their firms to mediate or arbitrate and be bound by any resulting agreement or award.  
(Amended 1/12)*

### ☐ Mandatory Arbitration

- ◆ REALTORS<sup>®</sup> principal – person who is a principal, partner, corporate officer or branch office manager standing in as the owner of a real estate firm.
- ◆ REALTORS<sup>®</sup> non-principal – individual who is not a REALTORS<sup>®</sup> principal of a real estate firm
- ◆ Non-member broker – licensed professional who does not belong to any board and/or State Association of REALTORS<sup>®</sup>.
- ◆ Client – individual for whom a broker is an agent. A REALTORS<sup>®</sup> has absolute fidelity to a client.
- ◆ Customer – individual who receives services and benefits but has no contractual relationship with and typically pays no fee to the agent.

### ☐ Points of Interest Concerning Arbitration

- ◆ Mandatory arbitration can only be invoked by a REALTORS<sup>®</sup> principal or client.
- ◆ Arbitration does not deal with violations of the Code of Ethics.
- ◆ Arbitration deals with contractual disputes.
- ◆ Mandatory arbitration requires all parties to submit disputes to arbitration rather than litigation.
- ◆ Parties can agree to litigate rather than arbitrate, but they cannot arbitrate the same issue after it has been litigated;
- ◆ nor can any party to the litigation, thereafter, charge the other party with failing or refusing to arbitrate.

### ☐ Arbitration enforced by court

- ◆ A Colorado broker approached by a seller regarding the sale of multiple income properties contacted other brokers (the challengers) and allegedly entered into referral agreements with the challengers. The broker sold one property for the seller and then learned that the challengers had sold some of the other properties but refused to pay the referral fee. The referring broker asked for arbitration over the fee. The court looked at the membership application for the local association and found, therein, an agreement to arbitrate. Colorado law (and that of most states, including Kansas) favors arbitration when there is a written agreement to do so. The court found that membership implied an obligation to arbitrate and ordered the dispute arbitrated even though the challengers had withdrawn from membership in the association before the fee dispute arose.