



Legal Hotline Stories

PresentationSlide Handout - by Vern Jarboe

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1

NAR Settlement

- Is a buyer-broker agreement required if I get a sign call on my listing?
- Can I show a listing to an unrepresented buyer?
- Do I need a buyer-broker agreement at the time of the showing?
- Is the only time I don't need an agreement during an open house?

Answer:

The settlement does not require any written agreement with the buyer when showing property listed by your firm.

2

Licensee Investment Real Estate

- If an agent is buying a property, investment property, off market and not, and is acting on his own behalf and not as an agent in a transaction. **Must this transaction be kept and monitored by our brokerage?**

Answer:

- A salesperson buying property for investment purposes should sign the agency agreement for themselves and indicate they are the buyer's agent in the contract. The brokerage firm should keep a final copy.
- The real estate commission doesn't care, if at all, how commissions are shared.

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NAR Settlement

Can a seller choose how much and how to communicate an offer of compensation to agents?

Answer:

Yes.

But if offer is less than the buyer agreement then the agent must amend the listing if more is to be paid.



4

Contract Forms

A contract includes a contingency on the sale of another home, however, an addendum was not signed by both parties.

The seller is now trying to exercise a kick-out clause, which does not exist in the documents that were signed by both parties.

Answer:

The brokers can mediate with the seller to continue with the contract, both sides will need lawyers.

5

Offer of Compensation

Who owes a commission depends on what you have promised to the selling agent.

To put this in the context, consider a selling agent accepting the offer of compensation offered through the MLS, which now is being offered directly.

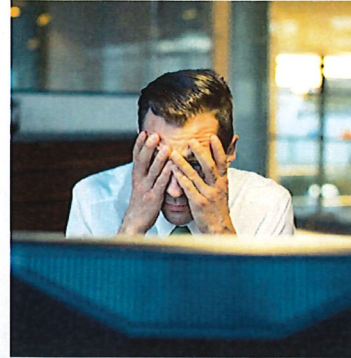
This seems to be a problem according to Article 17 of the Code of Ethics, rather than a contractual issue.

If a seller has authorized the listing broker to offer a specific amount of compensation, then it seems logical the seller would be stuck with that amount, because the listing broker is also stuck with that amount.

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Seller Refuses Repairs Required by Lender

FHA or VA loan inspection results in repair requirements so either seller does meet requirements of appraisal or loan is lost.



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Commercial Contract Question

Does the agency disclosure form need to be in my files if it is in the actual purchase and sale agreement and it is specifically lays out brokerage and representation of both the buyer and the seller.

Answer:

If the disclosure form is mentioned in the contract, you will also need an agency disclosure form separate from the contract to satisfy Kansas Real Estate Commission.

The agency disclosure form is not required in commercial transactions, but if a contract mentions it, then it is a good idea to include anyway.

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Realtor Wearing More Than One Hat

Are Realtors in Kansas able to be loan originators/mortgage brokers *and* a buyer's agent for the same party? Would this be considered dual agency?

Answer:

Yes, a broker can be a lone originator and buyer's agent. To some extent, it represents dual agency, but not in the license law meaning of that term. In the license law, dual agency is being a buyer agent and a seller agent at the same time.

Being a mortgage broker would require a licensee to make disclosures as required by federal law – RESPA.

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Duty to Try Be Reasonable

A contract is agreed upon and buyer inspection completed. After an inspection notice, the buyer asked to negotiate price. Now seller wants to cancel but buyer willing to accept as is.



Answer:

Either make peace or refer to counsel.

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Amending contract

A house is on the market. The seller has an agent, and the buyer has an agent. The seller wants to cancel the listing and represent himself. The listing agent agrees to this.

Answer:

Create a contract amendment by amending the agency disclosure piece and state in writing the listing agent is no longer working with the seller.

Be sure to keep good notes on the sequence of events.

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Owner Not Listing Seller

We have a house for sale listed by a person who has filed an affidavit of equitable interest. This person is not the owner of record, but has the house listed on Zillow through a broker in Florida. I have an interested buyer. If the buyer wishes to make an offer, who should be shown as seller in the purchase agreement?

Answer:

You may want to have preliminary title run to find the identification on file. If there is an escrow agent this deal can work, but the seller would be the buyer on as shown on the installment contract. The primary concern is that the contract for deed may not be a "real deal" and your buyer and you spend time, effort, and money on something that is not real.

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Amending Contract

We have had several instances where an Addendum to the Contract is left off the Initial Contract List of Addendums (i.e., Seller Disclosure, Contingency, Septic, etc.)

Our Compliance Department is asking for the agents to create an Addendum to add the Septic Addendum (that was fully signed at the time of the initial contract) to be added to the contract. Is that an audit requirement?

Answer:

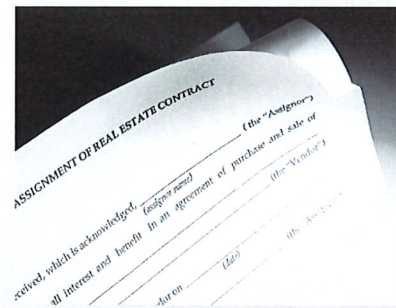
If your inside audit says it is, then it is for your company. This is not independently required by KREC, but if a contract refers to it then it could be part of the contract.

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Kick Out Clause

A different opinion on how a right of refusal works.

Wrote contract where sale was contingent on another sale - 48-hour first right of refusal.
Contingent contract with kickout clause



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Dual licenses or dual agency

I have an agent in my office that wants to get their property and casualty insurance license. So, they would sell real estate and insurance. I've searched the KREC website and cannot find anything that says this would be an issue but thought I would double check with you. Do you think it's ok for someone to do both?

Answer:

It is permissible. The rules that apply to this situation are not from KREC, but from the Real Estate Settlement Procedures Act – RESPA. RESPA does require significant extra record keeping, regulatory management and documentation.

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Nondisclosure of Contract

In an apartment sale transaction, the seller and listing agent say no coin op contract.

The day before closing, buyer finds out there is a coin op contract.

Buyer unhappy but closes and likely waives nondisclosure or needs attorney

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Timing of lead paint disclosure

I have a question regarding lead paint. Working on a transaction representing the buyer, the seller did not have the lead paint disclosure. Although the seller's agent indicated in the MLS that there was done along with the association documents. After the offer has been accepted, and had been accepted - two days later - agent sent me something dated two days after contract.

Answer:

Lead paint should be dated before contract.



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Ownership of Inspection Report

A buyer pays for a property inspection. As part of the negotiation, the buyer provides the seller a copy to prove the condition needing repair. The seller and buyer cannot reach an agreement and cancel the transaction.

The seller places the property as active in the MLS and uploads the inspection report the buyer paid for as part of the disclosure documentation.

Answer:

Owning a report is not the same as owning the information in a report. If a seller knows that an inspector has flagged issues with a home, then the seller needs to disclose those issues.

The easiest way to do this is by "sharing" the report. The person who likely owns the report is the inspector, who may own the copyright dissemination. Like any author, the inspector may object to people making copies of written materials and pictures.

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Property Management Records

A property management company with a trust account. What are the rules for how the company manages their bank account?

Answer:

There are no rules on how to manage an escrow account and cash flow.

